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United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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FIDELITY & DEPOSIT COMPANY OF MARY-  
LAND, a Corporation,  
Plaintiff in Error,  
vs.  
SPOKANE INTERSTATE FAIR ASSOCIA-  
TION, a Corporation,  
Defendant in Error.

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Transcript of Record.

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Upon Writ of Error to the United States District Court of  
the Eastern District of Washington, Northern  
Division.

FILED  
JUL 10 1905  
APPROV



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Circuit Court of Appeals  
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# INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS  
OF RECORD.

RANDALL & DANSKIN, Paulsen Building, Spo-  
kane, Washington,

GRAVES, KIZER & GRAVES, Old National Bank  
Bldg., Spokane, Washington.

Attorneys for Plaintiff and Defendant in  
Error.

WILLIAMS & CORNELIUS, Paulsen Building,  
Spokane, Washington,

Attorneys for Defendant and Plaintiff in  
Error.



In the Superior Court of the State of Washington,  
for Spokane County.

SPOKANE INTERSTATE FAIR,

Plaintiff,

vs.

FIDELITY & DEPOSIT COMPANY OF MARY-  
LAND,

Defendant.

COMPLAINT.

For cause of action, plaintiff alleges:

1. Plaintiff is a corporation organized under the laws of the State of Washington and has paid its annual license fee last due. Defendant is a foreign corporation doing business in this state.

2. During the period hereinafter referred to, plaintiff was conducting a fair and exposition at the fair-grounds in the City and County of Spokane, State of Washington. It maintained an office in a building on the fair-grounds in which there was a vault, inside of which was a safe. In this safe, large sums of money were kept by plaintiff during the continuance of the fair and exposition.

3. Upon, to wit, August 31, 1924, defendant entered into a written contract with plaintiff whereby defendant agreed to indemnify plaintiff for all loss by burglary, not exceeding twenty-five thousand (\$25,000) dollars, occasioned by the abstraction of money and securities from the interior of the safe or vault referred to in the second paragraph hereof by any person or persons making felonious entry into such safe or vault by actual force and violence, [1\*] of which force and violence there should be visible marks made upon such safe or vault by tools, explosives, chemicals or electricity. The contract further provided that, in the event of any loss or damage, upon it coming to the knowledge of plaintiff, immediate notice thereof should be given by telegraph to the defendant at its Home Office in Baltimore, Maryland, or to a duly authorized agent of the defendant, and that notice should also be immediately given of such loss to the public police, or other peace authorities having jurisdiction. Affirmative proof of loss or damage, under oath, on forms provided by the defendant were required to be furnished to the defendant at its

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\*Page-number appearing at foot of page of original certified Transcript of Record.

Home Office in Baltimore, Maryland, within sixty days from the date of the discovery of such loss or damage. Such contract was effective from 12 o'clock noon on August 31, 1924, to and inclusive of 12 o'clock noon on September 10, 1924.

4. During the night of September 4, 1924, or the early morning hours of September 5, 1924, burglars effected a felonious entry into the office, vault and safe heretofore referred to and abstracted from the interior of such safe fourteen thousand nine hundred seventy-four and 35/100 (\$14,974.35) dollars in money belonging to plaintiff and kept therein. Such entry was effected into the vault and safe by actual force and violence in that tools were used for cutting and removing bolts on the vault door and for drilling into the safe door, thus enabling the burglars to gain access to the interior of the safe and abstract the money contained therein. There were visible marks of the tools so used upon both the safe and vault doors.

5. Immediately upon discovery of the felonious abstraction of the money aforesaid, plaintiff gave notice to the duly authorized agents of the defendant in Spokane and also to the police [2] and peace authorities of the City and County of Spokane. Thereafter, within sixty days after the discovery of such loss, plaintiff made affirmative proof thereof, under oath, on forms provided by the defendant to the defendant at its Home Office in Baltimore, Maryland, such proof of loss being filled out as required by the contract and in accordance with the proof of loss furnished to plaintiff by defendant.

Plaintiff has also made demand upon defendant for the payment of the amount of the loss sustained as aforesaid, and defendant has refused payment thereof, and has denied that it is liable for the payment of the amount of such loss, or of any part thereof.

WHEREFORE, plaintiff demands judgment against defendant for the sum of fourteen thousand nine hundred seventy-four and 35/100 (\$14,974.35) dollars and its costs herein expended.

RANDALL & DANSKIN,  
GRAVES, KIZER & GRAVES,  
Attorneys for Plaintiff. [3]

State of Washington,  
County of Spokane,—ss.

Thomas S. Griffith, being duly sworn, states: That he is an officer of the within named plaintiff Spokane Interstate Fair, to wit, its president, and makes this verification for and on its behalf; that he has read the foregoing complaint, knows the contents thereof, and believes the same to be true.

THOMAS S. GRIFFITH.

Subscribed and sworn to before me this 1st day of December, 1924.

B. H. KIZER,  
Notary Public in and for the State of Washington,  
Residing at Spokane.

Filed in the U. S. District Court, Eastern District of Washington. Jan. 28, 1925. Alan G. Paine, Clerk. Eva M. Hardin, Deputy.

This Instrument Served upon the Insurance Commissioner of the State of Washington, Dec. 4, 1924, at 1:30 o'clock P. M.

H. O. FISHBACK,  
Insurance Commissioner.

By H. [4]

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In the District Court of the United States for the Eastern District of Washington, Northern Division.

No. L.—4321.

SPOKANE INTERSTATE FAIR ASSOCIATION,

Plaintiff.

vs.

FIDELITY & DEPOSIT COMPANY OF MARYLAND,

Defendant.

### ANSWER.

Comes now the defendant, and for answer to the complaint herein:

1. Admits the allegations contained in paragraph 1 of the complaint.

2. That this defendant has no knowledge or information sufficient to form a belief as to any of the allegations contained in paragraph 2 of the complaint and denies the same, except that defendant admits that during the times mentioned, plaintiff was conducting a fair and exposition at the fairgrounds in Spokane, Washington, and maintained

an office in a building on the fair-grounds, in which was a vault, and that there was a safe inside of the vault.

3. Denies each and every allegation, matter and thing in paragraph 5 of the complaint contained, except that defendant admits that on August 31, 1924, it issued and delivered to plaintiff an insurance policy of which a copy is attached hereto, marked Exhibit "A" and made a part hereof.

4. Denies each and every allegation, matter and thing in paragraph 4 of the complaint contained.

[5]

5. Denies each and every allegation, matter and thing in paragraph 5 of the complaint contained, except that defendant admits that on the morning of September 5, 1924, plaintiff notified the agents of defendant in Spokane, and also the peace authorities of the city and county of Spokane of the alleged felonious abstraction of moneys, and within sixty days thereafter plaintiff furnished certain proofs on forms obtained from defendant; defendant further admits that plaintiff has made demand of defendant for the payment of the alleged loss, and payment thereof has been refused, and further admits that defendant has denied that it is liable for any portion of the amount claimed.

I.

For a further, separate and affirmative answer and defense, this defendant alleges:

That if any of the moneys alleged in the complaint were abstracted, as alleged in the complaint, or at all, the same were abstracted at a time when

the vault and safe doors were not properly closed and locked by either a combination or time lock.

II.

For a further, separate and affirmative answer and defense, this defendant alleges:

That if any of the moneys alleged in the complaint were abstracted, as alleged in the complaint, or at all, and if at the time of the loss or damage, the vault or safe doors were properly closed and locked by combination or time lock, that entrance was effected to such safe and vault by the use of key, and by the manipulation of the locks to such safe and vault.

III.

For a further, separate and affirmative answer and defense, this defendant alleges:

That if any of the moneys alleged in the complaint were feloniously abstracted, it was at a time when the said plaintiff [6] was not regularly open for business, and plaintiff did not have at all such times two watchmen on duty.

WHEREFORE, defendant prays that plaintiff take nothing by its said action, and that it recover its costs herein.

WILLIAMS & CORNELIUS,

Attorneys for Defendant.

State of Washington,  
County of Spokane,—ss.

Jas. A. Williams, being first sworn, on oath deposes and says: That he is one of the attorneys for defendant in this action, and makes this affidavit for the reason that defendant is a foreign

corporation, and none of its officers are within the State of Washington; that he has read the above answer, knows the contents thereof, and believes the allegations therein contained to be true.

JAS. A. WILLIAMS.

Subscribed and sworn to before me this 30th day of March, 1925.

E. A. CORNELIUS,  
Notary Public for Washington, Residing at Spokane.

Received a copy this 30th day of March, 1925.

GRAVES, KIZER & GRAVES and  
RANDALL & DANSKIN,

Attorney for Plaintiff. [7]

EXHIBIT "A."

MERCANTILE SAFE BURGLARY POLICY.  
FIDELITY & DEPOSIT COMPANY OF MARYLAND,  
BALTIMORE, MARYLAND,

(Herein Called the Company).

Does Hereby Agree with the Assured ———, named and described as such in Item 1 of the Declarations forming part hereof, as respects Money and Securities, and such Merchandise as is described in the Declarations and stated therein to be insured hereunder:

(Indemnity Agreements.)

Indemnity for Loss.

I. To Indemnify the Assured FOR ALL LOSS BY BURGLARY occasioned by the abstraction of



any such property from the interior of any safe or vault described in the Declarations and located in the Assured's premises, by any person or persons making felonious entry into such safe or vault by actual force and violence of which force and violence there shall be visible marks made upon such safe or vault by tools, explosives, chemicals or electricity.

Indemnity for Damage.

II. To Indemnify the Assured FOR ALL DAMAGE (except by fire) to such safe or vault and to the said property contained therein, and to the premises including furniture and fixtures therein, caused by such person or persons making or attempting to make such entry into such safe or vault as aforesaid.

Limits of Indemnity.

III. The Company's Liability is limited to the several specific amounts stated in Sections (a), (b), (c), (d) and (e) of Item 6 of the Declarations and subject to such limits as respects each Section, the total liability of the Company hereunder is limited to the amount stated in Item 7 of the Declarations.  
Policy Period.

IV. This Agreement shall apply only to loss or damage as aforesaid, occurring within the Policy Period defined in Item 4 of the Declarations or within any extension thereof under Renewal Certificate issued by the Company.

**THIS AGREEMENT IS SUBJECT TO THE  
FOLLOWING CONDITIONS:**

Definitions.

A. "Merchandise" as used in this Policy shall

mean only such articles as are described in Item 20 of the Declarations "Money" as used in this Policy shall mean bank notes, bullion, currency, coin, uncanceled postage and revenue stamps in current use, United States War Savings Certificate stamps and Canada War Savings stamps not attached to registered certificates, and "Thrift" stamps. "Securities" as used in this Policy shall mean only such bonds, debentures, checks, coupons, demand and time drafts, promissory notes, bills of exchange, warehouse receipts, bills of lading, express and postal money orders, and certificates of stock and deposit, and other instruments, as are negotiable and as respects which, when negotiated, the Assured has no recourse against the innocent holder. "Premises" as used in this Policy shall mean the interior of that portion of the building designated in Item 2 of the Declarations which is occupied solely by the Assured in conducting his business. [8]

**Fire-Proof Safe With Chest.**

B. The Company shall not be liable for loss of Money, Securities or Merchandise contained in a safe or vault that is not burglar-proof unless taken from an inner steel burglar-proof chest closed and locked as hereinafter provided and opened by actual force and violence as aforesaid, or unless such safe or vault is described and insured hereunder as fireproof only.

**Exclusions.**

C. The Company shall not be liable for damage to the premises, furniture, fixtures or safes therein, unless such property is owned by the assured or un-

less the Assured as tenant is liable for such damage; nor shall the Company be liable for loss or damage if the Assured, any associate in interest, or servant or employee of the Assured or any other person lawfully upon the premises, is implicated as principal or accessory in effecting or attempting to effect the burglary; nor unless all vault, safe and chest doors are properly closed and locked by a combination or time lock at the time of the loss or damage; nor if effected by opening the door of any vault, safe or chest by the use of a key or by the manipulation of any lock; nor unless books and accounts are kept by the Assured and the Company can accurately determine the amount of loss or damage therefrom; nor for loss or damage resulting from or contributed to by fire, or occurring during a fire in the building in which the premises are located; nor for loss or damage resulting from or contributed to by, or occurring during an explosion except when caused by burglars; nor for loss of or damage to plate glass, lettering or ornamentation thereon; nor for loss of or damage to merchandise, furniture or fixtures encumbered by a chattel mortgage; nor for loss or damage caused or contributed to directly by invasion, insurrection, war, riot, strike by the Assured's employees, water or the action of the elements. The Company shall not be liable for loss of or damage to: (1) merchandise unless it belongs to the Assured or is held by him in trust or on commission or sold but not removed from within the safe or vault covered hereby, or unless the Assured is legally liable to the owner

thereof for such loss or damage as is covered hereby; (2) any property in excess of its actual cash value at the time of the loss or damage; (3) pledged goods in excess of the amount actually loaned on such goods by the Assured plus the interest actually accrued thereon at legal rates; (4) securities unless owned or held in trust by the Assured or as collateral for indebtedness to the Assured, or held by the Assured in such capacity as would render him legally liable to the owner thereof for such loss or damage as is covered hereby, nor unless immediately after their loss the Assured shall take all reasonable means to prevent their payment, negotiation, or retirement; (5) money unless owned by the Assured; (6) any property owned by the United States Government or held by the Assured as Postmaster.  
Merchandise not Owned by Assured.

D. In the event of a claim hereunder for loss of or damage to merchandise held by the Assured in trust or on commission, or sold but not removed, or for which the Assured is legally liable to the owner thereof for such loss or damage as is covered hereby, the Company reserves the right to adjust such loss or damage with the owner or owners of such merchandise, and payment of such loss or damage to such owner or owners shall constitute a full satisfaction of any claim made by the Assured for such loss or damage. If legal proceedings are taken against the Assured to recover for such loss or damage the Company reserves the right to con-

duct and control the defense in the name and on behalf of the Assured. [9]

Notice of Loss.

E. The Assured upon knowledge of any loss or damage covered hereby shall give immediate notice thereof by telegraph to the Company at its Home Office in Baltimore, Maryland, or to a duly authorized agent of the Company and shall also give immediate notice thereof to the public police or other peace authorities having jurisdiction.

Proof of Loss.

F. Affirmative proof of loss or damage under oath on forms provided by the Company must be furnished to the Company at its Home Office in Baltimore, Maryland, within sixty days from the date of the discovery of such loss or damage. Such proof of loss or damage shall contain a complete inventory of all the property stolen or damaged, stating the original cost, the actual cash value of each article at the time of the loss and the amount of loss thereon; a statement in detail of the damage done to the property and premises covered hereby; a statement defining the interest of the Assured in the property for which indemnity is claimed; a statement containing reasonable evidence of the commission of a burglary, as aforesaid, to which the loss or damage was due and of the time of its occurrence; a statement in detail of other concurrent or similar insurance, if any, on the property insured and of the purposes for which and the persons by whom the premises described

herein were occupied at the time of loss. The Assured upon request of the Company shall render every assistance in his power to facilitate the investigation and adjustment of any claim, exhibiting for that purpose any and all books, papers and vouchers bearing in any way upon the claim made and submitting himself and his associates in interest and also, so far as he is able, his employees and members of his household to examination and interrogation by any representative of the Company under oath if required.

Inspection, Suspension, Cancellation.

G. The Company shall be permitted at any reasonable time to inspect the safe, vault and premises covered hereby. This Policy may be suspended by written notice by any representative of the Company until any necessary requirements are complied with to the satisfaction of the Company. This Policy may be canceled at any time by either of the parties upon written notice to the other party stating when thereafter cancellation shall be effective and the date of cancellation shall then be the end of the Policy Period. If such cancellation is at the Company's request the earned premium shall be computed *pro rata*; if at the Assured's request the earned premium shall be computed at short rates in accordance with the table printed hereon. Notice of cancellation or suspension mailed to the Assured at his business address or at the premises covered hereby, or delivered to him at either place, shall be sufficient

notice and the check of the Company similarly mailed or delivered a sufficient tender of any unearned premium. Reinstatement after suspension shall be granted by the Company in writing only, and the Assured shall be allowed unearned premium *pro rata* for the period of such suspension.

#### Payments and Replacements.

H. Any indemnity paid for loss or damage under this Policy shall constitute a payment in reduction of the amount of insurance applicable hereunder to such loss or damage. The Company may repair any damage or replace any lost or damaged property with property of like quality and value or pay the true value of the same in money as the Company may elect. Any property, for which the Assured has been indemnified by payment or replacement shall become [10] the property of the Company. If recovered or returned, the Company may if it so elect, surrender such recovered or returned property to the Assured who shall thereupon repay to the Company any payment or return any replacement received by him as payment for the loss of such recovered or returned property. The party to this contract recovering any such property or receiving the return thereof shall immediately notify the other party in writing of such recovery or return.

#### Other Insurance.

I. If the Assured carries other insurance covering such loss or damage as is covered by this Policy,

he shall not recover from the Company under this Policy a larger proportion of any such loss or damage than the amount applicable thereto as hereby insured bears to the total amount of all valid and collectible insurance.

Limitations.

J. No suit shall be brought under this Policy until three months after proof of loss as required herein, has been furnished, nor at all unless commenced within two years from the date upon which the loss or damage occurred. If any limitations of time for notice of loss or damage or for any legal proceeding herein contained is at variance with any specific statutory provision in relation thereto, in force in the state in which the premises of the Assured as herein described are located, such specific statutory provision shall supersede any condition in this contract inconsistent therewith.

Prosecution.

K. In the event of loss or damage for which claim is made the Assured shall, at the request and expense of the Company, take legal action to secure the arrest and prosecution of the offenders.

Subrogation.

L. The Company shall be subrogated in case of payment of any claim under this Policy, to the extent of such payment, to all of the Assured's rights of recovery therefor against persons, corporations or estates.

Assignment.

M. No assignment of interest under this Policy



shall bind the Company unless its written consent shall be endorsed hereon by one of its officers.

Changes.

N. No condition, provision or limitation of this Policy shall be waived or altered except by written endorsement attached hereto, signed by the President, a Vice-President or Secretary, nor shall notice to any agent, nor shall knowledge possessed by any agent or by any other person, be held to effect a waiver or change in any part of this contract; but nothing in this paragraph shall apply to changes in the written portion of Items 1, 2, 3, 16, 17, 18, 19 and 20, of the Declarations forming part hereof when such changes are initialed by the Agent who countersigned this policy. The personal pronoun herein used to refer to the Assured shall apply regardless of number or gender.

Declarations.

O. The statements in Items numbered 1 to 20 inclusive in the Declarations hereinafter contained are declared by the Assured to be true. This Policy is issued in consideration of such statements and the payment of the premium in the Declarations expressed.

IN WITNESS WHEREOF, the Fidelity and Deposit Company of Maryland has caused this Policy to be signed by its President and Secretary at [11] Baltimore, Maryland, and countersigned by a duly authorized Agent of the Company.

THO. A. WHELAN,  
President.

ROBT. S. HART,  
Secretary.

Countersigned by

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FIDELITY AND DEPOSIT COMPANY  
OF MARYLAND.

Burglary Department.

Mercantile Safe Application and Daily Report.

Pol. No. Ms. 405659,

Renewing No. — New.

General Agent or Branch office,

McCREA & MERRYWEATHER.

- Item 1. Name of Assured is SPOKANE INTER-STATE FAIR.
- Item 2. Location of the building containing the premises is Fair-grounds, Spokane, Washington.
- The portion of the building occupied solely by the Assured in conducting his business and herein called "the premises" is entire.
- Item 3. The location of the safe or vault in the premises is First floor.
- Item 4. The Policy Period shall be from August 31, 1924 to Sept. 10, 1924, at 12 o'clock noon, standard time at the location of the premises as to each of said dates.
- Item 5. The Premium for this Policy is Twenty eight and 75/100 Dollars (\$28.75).
- The Premium is payable \$28.75 in advance.
- Item 6. The insurance granted by this Policy shall apply specifically as follows:

Section (a) In amount of \$ nil. For loss of or damage to Merchandise described in Item 20 and contained in Safe No. 1, the approximate cash value of said Merchandise not exceeding \$——.

Section (b) In amount of \$ nil. For loss of or damage to Merchandise described in Item 20 and contained in Safe No. 2, the approximate cash value of said Merchandise not exceeding \$——.

Section (c) In amount of \$25,000. For loss of or damage to Money and Securities contained in Safe No. 1 the approximate cash value of such money and securities not exceeding \$25,000.

Section (d) In amount of \$ nil. For loss of or damage to Money and Securities contained in safe No. 2, the approximate cash value of such money and securities not exceeding \$——.

Section (e) In amount of \$25,000. For damage to the premises, furniture, fixtures, safes and vault.

Item 7. Subject to the limits specified in Item 6, Section (a) [12] to (e) respectively, the Company's total liability under this Policy is limited to Twenty-five Thousand and no/100 Dollars (\$25,000.00

Item 8. (No vault, chest, safe or compartment thereof, shall be considered "burglar-proof" unless it shall have solid steel walls at least one inch in thickness and a door or doors containing solid steel at least one and one-half inches in thickness exclusive of bolt work.)

The Safe or Safes are described and designated as follows:

Safe No. 1.

- (a) Maker's name—Hall Safe Co. (a)
- (b) Safe Number, Style or Letter. (b)
- (c) The safe proper is "Fire-proof only  
"Burglar Proof" only or "Fire-  
proof" with "Burglar-Proof"  
chest (state which): (c) Fire-proof
- (d) Thickness of solid steel in outer safe  
door exclusive of bolt work: (d) 1/4 inches
- (e) Thickness of solid steel in middle  
door (if any) exclusive of bolt  
work: (e) 1/4 inches
- (f) Thickness of solid steel in inner  
chest door (if any) exclusive of  
bolt work: (f)
- (g) The doors of the safe are locked by  
combination locks as follows: 1  
Outer Safe Door. 2 Middle Door. (g) Combination  
3 Inner Chest door. Key.
- (h) The safe was purchased new or sec-  
ond-hand: (h) New.
- (i) The safe was originally bought of the  
manufacturer in the year: (i) 1909.
- (j) Price paid for safe by Assured: (j) \$75.00.
- (k) The safe is or is not within the vault  
described in Item 9: (k) Yes.

Item 9. The vault is described as follows:

Name of Maker of vault door:

National Safe & Lock Co.

55298.

Thickness of steel of vault doors, exclusive of bolt work is: Outer  $\frac{1}{4}$  inches. Inner  $\frac{1}{4}$  inches.

Item 10. A burglar-alarm system connecting all doors, windows, transoms, entrances, exits, hall and partition walls, and ceilings (unless ceilings are constructed of concrete) in the premises, with a central station, will be maintained in proper working order at all times when the premises are not regularly open for business, while this Policy is in force, except as herein stated. Independent flooring of cashier's cage, ticket auditor's window and entire side of office, also auditor has private button at his desk connecting with police department next door, alarm is sounded in police department next door.

Item 11. A burglar-alarm system connecting all accessible windows, doors and other accessible openings in the premises, with a central station, will be maintained in proper working order at all times, when the premises are not regularly open for business, while this Policy is in force, except as herein stated: No.

- Item 12. A burglar-alarm system connecting all accessible windows, doors [13] and other accessible openings in the premises, with an alarm gong on the outside of the building, will be maintained in proper working order at all times, when the premises are not regularly open for business while this Policy is in force, except as herein stated: No.
- Item 13. Each safe and vault covered hereby is enclosed in a burglar-alarm casing which is wired and connected with a central station, and such protection will be maintained in proper working order at all times when the premises are not regularly open for business, while this Policy is in force, *except* as herein stated: No.
- Item 14. A private watchman employed exclusively by the Assured will be on duty within the premises at all times when the same are not regularly open for business, while this Policy is in force, except as herein stated: Two watchmen on duty.
- Item 15. The watchman described in Item 14 will make hourly rounds and record same on a watchman's clock, or will signal an outside central station at least hourly, except as herein stated: No.
- Item 16. The Assured has no other Burglary, Theft or Robbery insurance, except as herein stated: F. D.

- Item 17. The Assured has not sustained any loss or damage nor received indemnity for any loss or damage by burglary, theft or robbery within the last five years, except as herein stated: No exceptions.
- Item 18. No Burglarly, Theft or Robbery insurance applied for or carried by the Assured has ever been declined or canceled, except as herein stated: No exceptions.
- Item 19. The business conducted in the premises by the Assured is Fair and Expositions.
- Item 20. The merchandise covered hereby is fully described as follows: Money and securities.

Filed in the U. S. District Court, Eastern District of Washington. Mar. 31, 1925. Alan G. Paine, Clerk. Eva M. Hardin, Deputy. [14]

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In the District Court of the United States for the Eastern District of Washington, Northern Division.

SPOKANE INTERSTATE FAIR,

Plaintiff,

vs.

FIDELITY & DEPOSIT COMPANY OF  
MARYLAND,

Defendant.



REPLY.

Plaintiff replying:

1. To the first affirmative answer of defendant, denies the matters and things therein alleged.

2. To the second affirmative answer of defendant, denies the matters and things therein alleged.

3. To the third affirmative answer of defendant, denies the matters and things therein alleged.

WHEREFORE, plaintiff prays judgment as in its complaint.

RANDALL & DANSKIN,

GRAVES, KIZER & GRAVES,

Attorneys for Plaintiff. [15]

State of Washington,

County of Spokane,—ss.

Thomas S. Griffith, being duly sworn, states; That he is an officer of the within named plaintiff, Spokane Interstate Fair, to wit, its president, and makes this verification for and on its behalf; that he has read the foregoing complaint, knows the contents thereof, and believes the same to be true.

THOMAS S. GRIFFITH.

Subscribed and sworn to before me this 1st day of April, 1925.

[Seal]

M. M. ELLIOTT,

Notary Public in and for the State of Washington,  
Residing at Spokane.

Filed in the U. S. District Court, Eastern Dist. of Washington. Apr. 10, 1925, — M. Alan G. Paine, Clerk. By Eva M. Hardin, Deputy. [16]

In the District Court of the United States for the  
Eastern District of Washington, Northern Di-  
vision.

No. L.-4321.

SPOKANE INTERSTATE FAIR ASSOCIA-  
TION,

Plaintiff,

vs.

FIDELITY & DEPOSIT COMPANY OF  
MARYLAND,

Defendant.

### JUDGMENT.

The above-entitled cause was heretofore called for trial, a jury impaneled and sworn, evidence was introduced on behalf of both parties and the jury instructed and retired to consider of its verdict; thereafter the jury duly returned into court its verdict in this cause, wherein and whereby it found for the plaintiff in the sum of \$15,211.54.

Now, upon motion of plaintiff, and in consideration of the record in the above-entitled cause and the verdict aforesaid, it is **CONSIDERED** and **ADJUDGED** that plaintiff do have and recover of and from the defendant the sum of \$15,211.54. with interest thereon at the legal rate from the date hereof, together with its costs and disbursements herein incurred.

Done in open court this 8th day of May, A. D.,  
1925.

J. STANLEY WEBSTER,  
Judge.

Filed in the U. S. District Court, Eastern Dist.  
of Washington. May 8, 1925, — M. Alan  
G. Paine, Clerk. By Eva M. Hardin, Deputy.  
[17]

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In the Federal Court of the United States for the  
Eastern District of Washington, Northern Di-  
vision.

No. L.-4321.

SPOKANE INTERSTATE FAIR ASSOCIA-  
TION,

Plaintiff,

vs.

FIDELITY & DEPOSIT COMPANY OF  
MARYLAND,

Defendant.

STIPULATION EXTENDING TIME SIXTY  
DAYS TO SERVE AND PRESENT BILL  
OF EXCEPTIONS.

It is stipulated and agreed by and between plain-  
tiff and defendant, that the defendant, Fidelity &  
Deposit Company, shall have sixty days from and  
after this date within which to serve and present  
its proposed bill of exceptions in the above-entitled

cause, and the time for so serving and presenting such proposed bill of exceptions is so extended.

Dated at Spokane, Washington, this 11th day of May, 1925.

GRAVES, KIZER & GRAVES,  
Attorneys for Plaintiff.

WILLIAMS & CORNELIUS,  
Attorneys for Defendant.

Filed in the U. S. District Court, Eastern Dist. of Washington, May 13, 1925, — M. Alan G. Paine, Clerk. Eva M. Hardin, Deputy. [18]

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In the Federal Court of the United States for the Eastern District of Washington, Northern Division.

No. L-4321.

SPOKANE INTERSTATE FAIR ASSOCIATION,

Plaintiff,

vs.

FIDELITY & DEPOSIT COMPANY OF MARYLAND,

Defendant.

ORDER EXTENDING TIME SIXTY DAYS TO SERVE AND PRESENT BILL OF EXCEPTIONS.

This cause came on to be heard upon the stipulation of the parties hereto, through their respective

attorneys, said stipulation providing that the time within which defendant should serve and present its proposed bill of exceptions in this cause should be extended for sixty days from and after May 11, 1925, and the Court having read the stipulation, and being fully advised in the premises,

IT IS ORDERED that the time within which the defendant shall serve and present its proposed bill of exceptions be, and the same is hereby extended sixty days from and after May 11, 1925.

Dated at Spokane, Washington, this 13th day of May, 1925.

J. STANLEY WEBSTER,  
Judge.

O. K.—G. K. & G.,  
For Plaintiff.

Filed in the U. S. District Court, Eastern Dist. of Washington. May 13, 1925, — M. Alan G. Paine, Clerk. Eva M. Hardin, Deputy. [19]

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In the District Court of the United States for the Eastern District of Washington, Northern Division.

No. L.—4321.

SPOKANE INTERSTATE FAIR ASSOCIATION,

Plaintiff,

vs.

FIDELITY & DEPOSIT COMPANY OF MARYLAND,

Defendant.

### PETITION FOR NEW TRIAL.

Comes now the defendant, and petitions the Court to vacate the verdict of the jury and the judgment entered in this case, and to grant defendant a new trial for the following causes materially affecting the substantial rights of defendant, to wit:

1. Irregularity in the proceedings of the court, jury and adverse party, and orders of the Court by which defendant was prevented from having a fair trial.

2. Misconduct of the jury.

3. Accident and surprise, which ordinary prudence could not have guarded against.

4. Insufficiency of the evidence to justify the verdict and judgment in this:

- (a) There was no evidence sufficient to warrant the jury in finding that any of the money was abstracted from the interior of the safe in question by any person or persons making felonious entry into such safe by actual force and violence, of which force and violence there were visible marks made upon such safe by tools, explosives, chemicals or electricity. [20]

- (b) There was no evidence that the one who abstracted the money from the safe used any force or violence, or that any tools, explosives, chemicals or electricity were used for such purpose.

- (c) If there was any evidence that in the abstraction of the money from the safe any actual

force or violence was used, or that any visible marks were made upon such safe by tools, explosives, chemicals or electricity there was no evidence that such force or violence was used or exerted or applied after the policy of insurance was written and became effective.

(d) If there was any evidence that in the abstraction of the money from such safe, there were any visible marks made thereon, by tools, explosives, chemicals or electricity there is no evidence that such visible marks were made, or that such tools, explosives, chemicals or electricity were used after the policy was written and became effective.

(e) That it conclusively appears from the evidence that if the money was abstracted from said safe at said time alleged and claimed, that entrance was effected by opening the door of the vault and safe, and each of them by the manipulation of the locks on both the vault and the safe.

5. Error in law occurring at the trial as follows:

(a) In denying defendant's motion for directed verdict at the close of all the evidence.

(b) In refusing to give defendant's requested Instruction No. 1 to the effect that the jury should return a verdict in favor of defendant.

(c) In refusing to give defendant's requested Instruction No. 4, and in refusing to instruct the jury that the verdict should be in favor of defendant, if entrance was effected to the safe by the manipulation of the combination lock on the safe.

(d) In refusing to give defendant's requested Instruction No. 5, and particularly in refusing to instruct the jury that the verdict should be in favor of defendant if entrance was effected to the safe by the manipulation of the combination even though the jury should find that knowledge of the combination and how to manipulate it for the purpose of opening the door was obtained through some fraud or by the use of a hole made in the safe door by themselves or others.

(e) In refusing to give defendant's requested Instruction No. 6, and particularly in refusing to instruct the jury that they should find in favor of defendant, unless they should find that the plug in the hole of the safe door under the rim was removed by the alleged burglar.

(f) In refusing to give defendant's requested Instruction No. 7, and particularly in refusing to instruct the jury to disregard the drilled hole, and the removal of the plug therefrom, unless the hole was bored by the burglars, or the plug was removed by the burglars between noon on August 31, 1924, and the time of the discovery that the money had been taken.

(g) In refusing to give defendant's requested Instruction No. 8, and particularly in refusing to instruct the jury that no liability would attach under the policy for any act done by the burglar or burglars previous to noon on August 31, 1924, and particularly for failing to instruct the jury that they could not consider any such previous



act for the purpose of creating or fixing a liability under the policy.

(h) In instructing the jury that "if you further find from such preponderance of the evidence that at the time, or previous to the time of the entry referred to in the complaint the person or persons affecting such entry did so by drilling or drawing out by tools the plug, which had been previously driven into the hole in the safe, and were thereby enabled to [22] affect an entrance into the safe, then the drilling or drawing out of such plug with tools was the use of actual force and violence within the terms of the policy, and the hole left in the safe door by reason of such drilling or drawing out of such plug was a visible mark of force and violence upon such safe within the terms and meaning of the policy," and more particularly in that the Court by its instructions permitted the jury to return a verdict in favor of plaintiff, even though the force and violence were previous to the commencement of the policy period.

(i) In instructing the jury that they might return a verdict in favor of the plaintiff "although you should further find that the person or persons who effected the entrance into the safe, and took the money therefrom, during the policy period had previously, to its commencement, removed the plug from the hole in the safe door by drilling or drawing out by tools, and thereby acquired a knowledge of the working of the combination by which they were subsequently and during the policy

period able to effect an entrance into the safe and extract therefrom its contents.

(j) In instructing the jury that they might return a verdict in favor of the defendant if the ones taking the money from the safe did so by drilling or drawing out the plug in the safe door with tools, leaving a hole in the safe by means of which such person or persons were enabled to gain a knowledge of the working of the combination, and so to work the combination and open the safe door, and take the money from the safe, and "that defendant is not relieved from liability because the final act of entering the safe was effected by working the combination on the safe door, and further that if such person or persons were enabled to gain a knowledge of the manner of working the combination by means of drilling or drawing out the [23] plug in the safe door, and the person or persons so drilling or drawing out such plug thus obtained access to the combination and thereby were enabled to effect an entrance to the safe, they would be liable.

This petition is made upon the records and proceedings in this cause, the reporter's transcript of his shorthand notes, and the minutes of the court.

WILLIAMS & CORNELIUS,

Attorneys for Defendant.

Received a copy this 9th day of June, 1925.

GRAVES, KIZER & GRAVES,

Attorneys for Plff.

Filed in the U. S. District Court, Eastern Dist. of Washington, Jun. 10, 1925, — M. Alan G. Paine, Clerk. Eva M. Hardin, Deputy. [24]

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In the District Court of the United States for the Eastern District of Washington, Northern Division.

No. L-4321.

SPOKANE INTERSTATE FAIR ASSOCIATION,

Plaintiff,

vs.

FIDELITY & DEPOSIT COMPANY OF MARYLAND,

Defendant.

ORDER DENYING PETITION FOR NEW TRIAL.

This cause came on regularly for hearing heretofore, on the petition of defendant for new trial, and the Court having heard the said motion, and being advised in the premises,

IT IS ORDERED that said petition for new trial be and the same is hereby denied, and defendant is allowed an exception.

Done in open court this 29th day of June, 1925.

J. STANLEY WEBSTER,

Judge.

O. K.—G. K. & G.

Filed in the U. S. District Court, Eastern Dist. of Washington, Jul. 7, 1925, — M. Alan G. Paine, Clerk. Eva M. Hardin, Deputy. [25]

Lodged in the U. S. District Court, Eastern Dist. of Washington. Jun. 16, 1925, — M. Alan G. Paine, Clerk. Eva M. Hardin, Deputy.

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In the District Court of the United States for the Eastern District of Washington, Northern Division.

(No. L-4321.)

SPOKANE INTERSTATE FAIR ASSOCIATION, a Corporation,

Plaintiff,

vs.

FIDELITY AND DEPOSIT COMPANY OF MARYLAND, a Corporation,

Defendant.

BILL OF EXCEPTIONS.

BE IT REMEMBERED that the above-entitled cause came on regularly for trial in this court on the 1st day of May, 1925, at 10 o'clock in the forenoon of said day before the Honorable J. Stanley Webster, Judge presiding, plaintiff appearing by its attorneys, Randall & Danskin and Graves, Kizer & Graves, and the defendant by its attorneys, Williams & Cornelius, and a jury having been regularly

(Testimony of Thomas S. Griffith.)

impaneled, whereupon the following proceedings were had and done to wit:

TESTIMONY OF THOMAS S. GRIFFITH,  
FOR PLAINTIFF.

THOMAS S. GRIFFITH, called and sworn as a witness on behalf of plaintiff, testified, on direct examination, as follows:

My name is Thomas S. Griffith and I reside in Spokane and have since March, 1888. I am president of the Fair Association and have been since 1912. This policy of insurance was taken out by my telephoning McCrea & Merryweather and asking them to put on a burglary and hold-up policy. The policy issued was offered in evidence and admitted and marked "Plaintiff's Exhibit 1" and is, in all respects, the same as set out as an exhibit to defendant's answer. [26]

TESTIMONY OF B. J. SUTHERLAND, FOR  
PLAINTIFF.

B. J. SUTHERLAND, called and sworn as a witness on behalf of plaintiff, testified, on direct examination, as follows:

My name is B. J. Sutherland and I reside at Spokane and am Bank-teller with the Exchange National Bank, and have been such for about four years. I have been with the bank for close to seven years. At the time of the loss of the money in question I was employed at the Interstate Fair

(Testimony of B. J. Sutherland.)

in the auditor's office as cashier. I took in the money from the ticket seller in payment of concessions and so on. I took in all the money that came in and made all payments. At the close of the day I would count the cash and make up a cash sheet. On the night of September 4th, 1924, I made a makeup sheet as shown by the one you handed me. It shows the amount of gold, silver and currency that we had at the close of business that day. The currency was put into five hundred-dollar packages with a strip around it and the silver—for instance, dollars, when I would get as much as five hundred dollars or more—I would put in a sack and the rest was left in the cash drawer and put in the vault at night. A good deal of the cash was in the safe as I had put it in during the day but the balance was put in at the close of business, that is, that which was put in the safe. Some of the silver dollars and halves, in sacks, were put on the vault floor as there was not room in the safe for it all. At the close of business that evening I put in the safe thirteen thousand dollars in currency in five hundred dollar packages; seven hundred and fifty of this was in big bills. All of it was in the safe with the exception of thirty-five hundred dollars in silver which was in seven sacks of five hundred dollars each on the floor of the vault. As money was taken in during the day I would write [27] out a receipt for it and make a duplicate and deliver it to the auditor for the

(Testimony of B. J. Sutherland.)

purpose of making up his books. At night after the cash was counted the auditor would ask me how much I had and I would tell him the amount and he would say "O. K." or "That is all right," or whether I was or not. After the money was put in the safe on this night I soon left for home. I was the last to leave the office. I did not have the combination of either the safe or vault. Mr. Reinhard had the combination. I know of no others. I did not close the outer doors when I left or lock them as there wer employees in the outer office. At the start of the fair Mr. Reinhard gave me a check for one thousand dollars with which to get change to take out to the fair. That amount is charged against me but there is no receipt written for that and consequently does not figure in the amount of cash that I reported to him that night. Now, then, on Thursday morning he gave me a check for five thousand dollars with which to pay these horse men, track men, and that, with the one thousand dollars, makes the six thousand dollars that I deduct in the statement which you have of the cash for that day. Of course there was no receipt written for that and consequently I deducted that in reporting to Mr. Reinhard the total amount of cash to make up the day of receipts; that does not affect in any way the amount of cash that went into the safe; that belonged to the fair; it is just charged to me instead of having the receipt made out for it.

(Testimony of B. J. Sutherland.)

(Makeup sheet identified by witness admitted in evidence and marked "Plaintiff's Exhibit No. 2.)

[28] There were several parcels in the safe that night with money left by concession men. We did not know the amount of these. The concession men brought us, from time to time, things they wanted to leave for safekeeping. For instance, one man said he couldn't get to the bank and would like to leave some money there. We put that in a sack and put a string around it with a check on it and gave him a check with the same number. This was something like a baggage check, and that was left in the vault on top of the safe. I think there were three who had left packages that night but I do not know the amount of money. They were not put in the safe. I left that night about twenty minutes after ten and returned the next morning about ten minutes after eight. Mr. Reinhard and Mr. Perry were in the office. Mr. Perry is a race-track man; also Mr. Askins who has charge of the tickets. He is with the postoffice. The first thing when I came in Mr. Reinhard beckoned to me and took me over to the cage and pointed to the vault and says, "Do you see anything there?" I didn't see anything. There was nothing unusual that I noticed right at first and then he asked if I noticed that the sacks were not there. Then of course I noticed that they were gone. I noticed the vault door was open and the safe stood ajar and that was unusual because Reinhard didn't



(Testimony of B. J. Sutherland.)

usually open the safe until I got there. The cage door was closed and Reinhard said not to go in there until the detectives came. I did not go in until after the police officers came. I was there at that time. I later went in and discovered that the money was gone from the safe. We have little trays in which we keep our little silver; these were brought out from the bank and I handled these just as we do at the bank and [29] when evening came I put the trays in the safe leaving the money right in the tray as we used it in during the day. The trays at this time were out of the safe and on the shelf of the vault and were empty. These stood on the counter back and showed no evidence of haste and evidently the money had been picked out of there. It showed that it had not been dumped because the rubbers and things I had in the center of it were undisturbed.

Mr. GRAVES.—We do not claim the right to recovery except for the money that was in the safe.

WITNESS.—(Continuing.) When I put the money in the safe and went out on the night of the 4th Mr. Reinhard happened to be in the vault, and before the safe door was locked I said, “I will look again to see that there is nothing left out.” After making the examination I said, “All right,” and Mr. Reinhard turned the combination. I saw him do it. He immediately closed the vault doors and locked them with the combination. The vault door

(Testimony of B. J. Sutherland.)

locks with the combination just like you throw on any safe.

On cross-examination by Mr. WILLIAMS, the witness testified as follows:

The money we received during September 4th came mostly from ticket sellers and some from concession people and some as payment on contracts and things of that sort. This money from ticket sellers was from those on the fair ground. There were some cash receipts on that day in checks but it was mostly gold and silver. I did not keep a record of the checks. My duty was to account for all money received. Exhibit 2 does not show the checks received; it is limited entirely to currency and cash. On the evening of September 3d I placed all the money in the safe as usual. I started business on the [30] 4th except that at about 8:30 or 9 o'clock in the morning the bank comes out and gets the deposits and left one thousand dollars for change purposes, but on this particular morning left five thousand dollars additional. Therefore, after they got there I had six thousand dollars to start with that day. Under our arrangement with the bank they came out for the money in the morning. We didn't get much money in the morning except, possibly, payments on contracts and things like that. The payments on contracts might be either by cash or check. Practically the entire crowd for the fair were within the gates prior to 2:30 or 3 o'clock. The first ticket

(Testimony of B. J. Sutherland.)

sellers began to come in about 2:30, I should say, turning in the money that had come in to them. The first ticket sellers who came in were the ones on duty earliest in the morning. I think there were only three or four of them. The bulk of the ticket sellers didn't come in until around five or six o'clock. Of this five thousand extra that was left with me for the purpose of the horsemen some of it was used that day for paying checks. I don't recall exactly that we paid horsemen that day but whenever there were large checks to be cashed we had to use the large currency. The cage which I referred to was a lattice steel bar cage about four feet wide and, I should say, ten or twelve feet long, and I should say about seven feet high. The lattice work entirely surrounds the opening and there is an open door that latches on that cage, and by opening the door to the cage you gain access to the door of the vault and the vault door is probably six feet high and a little wider than three feet and has a combination lock; the interior of the vault is about ten or twelve feet square and all masonry. The vault faces east. After [31] you enter the vault door this safe was up against the north wall of the vault and faced out and was probably six feet from the vault door. The safe is about 2½ feet each way and set up on a little platform about 2½ to 3 feet high from the floor. The door of the safe faced south. When I got there on the morning of September 5th the

(Testimony of B. J. Sutherland.)

vault door was open. If it had been locked the night before then someone had unlocked it before I got there. I do not know whether anyone had got into the interior of the vault before I reached there. In any event the safe door was entirely open at that time. I first entered the vault that morning about half an hour after I arrived. I do not think any others entered during that time or before the police came. Chief of Police Turner, Finger Expert Jordan and several other officers were there. When I went inside the vault I looked the safe over. I looked around inside the vault to see anything that could be discovered and to see how the money might have gotten away. I made a pretty careful search at that time and on some subsequent occasions, from time to time, as I had leisure I would look around in there with the idea of probably finding out some way that they might have gotten into the vault without going through the door. The thirty-five hundred dollars in silver in bags was not within the safe but was in the vault proper—five hundred dollars in each bag. Those seven sacks were gone. In the safe the silver consisted of two hundred and seventy-seven dollars in dollars, one hundred seventy-nine dollars in halves, one hundred sixty-two dollars and seventy-five cents in quarters, ninety dollars and ten cents in dimes, nickles and pennies. They did not take the pennies. When I left the night before there was no one there except the employees

(Testimony of B. J. Sutherland.)

in the outer office. The last ones to leave previous to my going was Mr. Reinhard and some of his family. They left probably a minute or so sooner. I put the money [32] in the safe from time to time during the day as it accumulated.

### TESTIMONY OF L. F. REINHARD, FOR PLAINTIFF.

L. F. REINHARD, called and sworn as a witness on behalf of plaintiff, testified, on direct examination, as follows:

My name is L. F. Reinhard and I have resided in Spokane since 1908 and am a certified accountant and was in the employ of the Fair Association and was auditing in the fall of 1924. My duties would last pretty nearly all the year. I have been auditor for the fair since 1909. The cash comes in from various sources,—advertising, sale of space, and admissions. The admissions are taken in by ticket sellers. They start coming in along about 4 o'clock. They come in and make up their money, roll it up and count it and as soon as they come out right on that they go up to the ticket auditor and he figures on his report how much they should have. He turns in this report to this cage that you were talking about to the cashier and the cashier is supposed to see that he gets that much money as called for. The cashier then has the money and he always makes up his money in

(Testimony of L. F. Reinhard.)

the middle as fast as he finds time and puts it into the safe so that as little money as possible is outside. The cashier issues receipts in triplicate; the original he gives to the party who pays the money. When a sheet of five is filled it is torn out and handed to me, from which I write up the cash received book, and the triplicate receipt is the book of permanent record. When we come to close up in the evening I see that I have written up my cash book his last receipt. I figure the books and take the difference [33] between the footing that night and the footing in the morning and if the amount agrees with what my books show that he should have we quit for the day and go home. My books show the total receipts for the year to the close of September 4th was \$86,770.20. The total receipts at the beginning of September 4th were \$72,816.83; the difference was the day's receipts \$14,953.37. There were some checks in this. My books do not distinguish between checks and cash. Before I went home that night I saw all the money in sight in the cashier's cage put into the safe. I did not myself count the money. The cashier shut the door of the safe and I turned the combination. I locked it. Then I started to leave the vault, shut the inner door, reached out and turned off the vault light, shut the vault door, took my coat and hat and went home. I threw the combination on the vault door and saw that it was closed. When I left Sutherland was still there in

(Testimony of L. F. Reinhard.)

the auditor's office. There were possibly five or six in the outer office. This was about a quarter after ten. I got back the next morning at five minutes to eight. There was nobody then at the auditor's office nor anybody in the outer office. I entered the building through the police office and went in to the back room, hung up my coat and started to open the vault as usual. I opened the vault and the minute I threw the vault door open I saw the inner safe door folded back—open, and some of the contents of the safe, like trays and the receipt-book, on the shelf on the north side of the vault. I hollared out, "We are touched." I immediately went to the telephone and called up Mr. Griffith. Then I just sat there and didn't let [34] anybody go in that cage or vault or anything until the insurance people came and the police came, and when they were there then we went into the vault. I asked Mr. Griffith to notify the police and I suppose he did. The police got there around 9 o'clock. Mr. Williams and Mr. McCrea came out representing the insurance company. They got there either a little before or a little after the police came. When we went in to the vault all the silver was gone. Everything on top of the safe was gone and all our money was gone except \$10.86,—that is, the roll of pennies in the safe in those trays were left and the loose nickels and pennies on the change tray were left. That was all that was left. This money

(Testimony of L. F. Reinhard.)

that was taken, was in the safe all belonged to the plaintiff.

On cross-examination by Mr. WILLIAMS, the witness testified as follows:

We did not pay out very much on that day to the horsemen. The purpose of the five thousand dollars extra money delivered to Mr. Sutherland on that day was principally to cash checks for running horsemen. They quit on Thursday and go home. The demand for that money would not arise until late in the day. You can't tell,—they may come in early in the day and want the money for the first three days of the week. We had not held any extra money out for any purpose on Wednesday or Tuesday. On Monday and Tuesday and Wednesday Mr. Sutherland began his duties with only one thousand dollars for change, but on this day there was an additional five thousand dollars given him. Our receipts on that particular day—the cash and checks—until along about four o'clock amounted to five hundred sixty-five dollars. That is all we took in from receipts up to that time. Of the five thousand dollars, as it happened, there wasn't hardly any used this year. When I arrived on the morning [35] of September 5th the vault door was locked and the combination thrown. I threw the tumblers the night before. I turned them half a dozen times, and the vault door could not be opened by just simply turning back to a certain point. There were some inner doors to that vault;



(Testimony of L. F. Reinhard.)

they were folding doors. They were not locked in any manner; there was a lock on them but we never used it. The lock was a common one. I opened the vault door in the usual way as usual, and it responded to my manipulation of the combination in the usual manner. When I opened the vault door the inner doors of vault were opened. I had left them closed the night before. The light was out in the vault. I turned the light on after I opened the outer door. The switch for the inside light was on the outside of the vault. We all went in right away after the police came. I did not look to see how entry had been effected to the safe or whether there were any marks on the safe. We had to go to work when the police were there and left them in charge. The chief of police, the chief of detectives and two or three others were there and the prosecuting attorney finally came. When I left the night before the parties who were in the outer office were Mr. Semple, Mrs. Semple, Arch Shale and Mr. Randall, the attorney. Mr. Semple might be called the boss of the Fair, next to the president. He has to do with the business and all the outside of the office.

#### TESTIMONY OF E. C. SHEA, FOR PLAINTIFF.

E. C. SHEA was called and sworn as a witness on behalf of the plaintiff, testified, on direct examination, as follows: [36]

(Testimony of E. C. Shea.)

My name is E. C. Shea. I reside at Spokane and am superintendent of the Spokane Interstate Fair. I do not know who was the last person to leave the office the night the safe was robbed. I left at 11:05. There was nobody in the front office when I left. I can't say whether there was anyone in the auditor's office. I didn't go up there. When I left I put the padlock in the door leading to what we call the main office and snapped it. That is the front door leading from the midway to the office. The auditor's office is in the rear of our office.

On cross-examination by Mr. WILLIAMS, the witness testified as follows:

The door that I put the padlock on is the one which opens from the fair-grounds proper. It was the south door on the south end—the extreme south door. It is not the door that directly connects with the auditing department. When I locked this door there was nobody still in the front office. I do not know whether there were any in the police department office. There are some other doors entering, either one of which would give access to the interior of that building.

#### TESTIMONY OF JOHN C. SEMPLE, FOR PLAINTIFF.

JOHN C. SEMPLE, called and sworn as a witness on behalf of plaintiff testified, on direct examination, as follows:

My name is John C. Semple and I have resided

(Testimony of John C. Semple.)

at Spokane practically all of my life and am a mining engineer and am known as assistant to the president of the Spokane Interstate Fair. I have drawn a general plat of the fair-ground and of the building. The ones which I produce are to the best of my knowledge a correct plan of the fair-grounds. [37] The oval represents the race-track. The building marked "grand-stand" is the grand-stand and this is a correct picture. The part to the south end of the grand-stand which is not marked, that is, the main office are business offices. The grand-stand is all one building under one cover. There are open spaces, however, underneath. The grand-stand comes right down within a few feet of the tracks. The first row of seats is back ten or twelve feet from the edge of the track and there is a walkway in front of the grand-stand along the edge of the tracks. I have a plan of the particular building.

(The plan in question was produced and admitted in evidence as Plaintiffs' Exhibit 3.)

There is unused space under the grand-stand,—under the seats. So far as that plat is drawn the figures and marks on it are all correct and it is drawn to scale, which is a quarter of an inch to the foot.

(Plat marked "Exhibit 4" was admitted in evidence.)

Exhibit 4 shows better the hole under the grand-stand. The hole is shown here. The side of

(Testimony of John C. Semple.)

the building is covered with material  $7/8$ ths of an inch thick and  $3/4$ ths of an inch wide—siding you might call it. Three of these boards were cut off as shown here on both ends, and these boards were fastened together on the back inside, that is, so that they could not be seen, with straps nailed across each to each end of these three boards and then there were leather hinges put on to that. That made a door—made it small, and there was leather hinges put on to that on the side so that it could not be seen and hung from the top. With the exception of the saw marks it fit into the space. In Exhibit 4 there is shown at the northwest of the auditor's office a table and under that is a hole two feet and two inches in length and this is shown also on this No. 5. The size of both of these holes [38] is as marked on the plat. This partition wall is made by 2 by 4's vertically there and there is what is commonly known as ceiling nailed on the inside. That is, this is sealed on the inside from the auditor's office. On the outside there is no covering of any kind over the 2 by 4's. That door through there was made by cutting off in behind the 2 by 4 with some kind of a thing—hacksaw blade or something. This hole was cut in the inside right next to the 2 by 4. After that was done another 2 by 4 was put up along the side of that 2 by 4 so that from this side you could not see the cut. Under this table right here there was put up a 2 by 4 right here back of the table against the

(Testimony of John C. Semple.)

wall. There was a 2 by 4 placed lengthwise with the table going that way. It looked as if it might be a support for the back of the table. These boards that were cut were then put together with a very narrow strip of wood and six screws put together with screws. The screw holes were countersunk and the strip that was on this end over here was practically the end of the slide. If this would be the whole piece this is practically at the end and a piece had been cut off behind the two by four that was holding it on the outside so that the cleat itself was hidden and went back out of sight. The slide would be opened by sliding it behind the 2 by 4 that was supposed to hold it in place.

(Map marked "Exhibit 5" was admitted in evidence.)

I have the photograph showing the hole. That shows it though not as it was. I believe the police have the door in their possession; they took it away and that is just patched up there now.

(Photograph identified by witness admitted as Exhibit No. 6.) [39]

Here is a photograph that shows the hole under the table. It was taken from the office. It does not show the hole as it was when we discovered it but as it is at present. We patched it up. The police took that door away. That photograph shows the table that has been referred to.

(Photograph admitted in evidence as Exhibit No. 7.)

(Testimony of John C. Semple.)

This photograph shows the corner where the hole was located and as much of the office as we could get in there and shows the position of the vault door and the cashier's cage.

(Photograph admitted in evidence as Exhibit 8.)

This photograph shows the location of both holes—that is, underneath the grand-stand. It was taken underneath the open space that I referred to. Here is the patched hole leading to the auditor's office and the patched hole coming in from the outside.

(Photograph admitted in evidence marked Exhibit 9.)

This photograph is one of the back of the main office, part of the grand-stand showing the location of the three doors that enter that part of the building.

(Photograph admitted in evidence marked Exhibit 10.)

On the night of the robbery I left the office at the fair ground about twenty minutes to eleven. It must have been eleven before I got off the grounds. When I left the office I believe the only one right in the office was Mr. Randall. When I speak of the office I mean both the main office and the auditor's office. I think I spoke to him right in the passageway coming out towards the front door. I was right around the front there somewhere. I think it was about 8:30 when I got there the next morning. Mr. Reinhard, Mr. Perry, Mr. Sutherland, and I think, Mr. Askins, was there. I am practically certain that the police were there. I do not think

(Testimony of John C. Semple.)

the [40] people from the insurance company were there but I believe that they came right after that. I inspected the vault and safe that morning. I found the condition about as has been described here. For the purpose of trying to find out how they got in on Friday morning I called the manager of the Burns Detective Agency and engaged them to try to find out how this was done. We already had one of the Burns people out there working for us and they assigned others immediately to work on the thing who were there with the police officers and the city detectives. They made an investigation here and in other places so far as we thought was necessary. That whole place under there—that space in the center east of that small storeroom and in through there and all through that part of the building—was examined in a rather hurried sort of fashion by the Burns Detective people and I believe by the city police, all working together. That was immediately afterwards. However, on going on with the fair it could not be done in a proper sort of manner so that it was Sunday morning when the city detectives, Mr. Randall and myself were there and started a systematic search. We were all together going through there and Mr. Hudson, the city detective, was back in the southeast corner of the grand-stand underneath and noticed these cleats and then called it to our attention and we could see it of course, and after that was discovered it was only natural to suppose that there was some way in to the main office, and they started

(Testimony of John C. Semple.)

to search for that and went systematically, and then we discovered the hole under the table. That was Sunday morning following the robbery. With reference to my investigation of the condition of the vault and safe doors on Friday morning, September 5th, Mr. Randall called Mr. Bolt, a locksmith in Spokane, and he at that time came out to examine the vault and safe doors and mechanism, [41] and together with the detectives and some of the officials of the fair we went over the vault and safe doors. At that time we didn't see anything the matter with the safe. Mr. Bolt could find no evidence of anything the matter with it. On the vault door there was a bolt that works vertically on the lever or when you turn the handle it throws that through a lever or it throws one bar up or just throws one bolt up. They found that that set screw had been cut off or taken out of there leaving the bolt disconnected with the lever arm, so when you turn the handle that bolt would not work. The lever arm had been taped with electric friction tape. The various parts of the mechanism of the bolt had been freshly oiled. That is about all that was found at that time. Some time later the firm of Graves, Kizer & Graves were employed by the fair and Mr. Kizer wanted to look the thing over—the situation at the fair-grounds, and see what he could find there. So he asked if I could engage a locksmith to go with him. He also arranged for me to go out there. It just happened that afternoon I had to go to the courthouse for some other papers and I told them



(Testimony of John C. Semple.)

when they went I would go with them, so Mr. Kizer, Mr. Corey, the locksmith, Mr. Reinhard and myself went to the fair-grounds. We got in there and got the safe open and Mr. Corey didn't have any tools with him to take the door apart or anything like that, so I left him and went down and got some old tools that were on the ground and asked him if he could use them. He said he didn't think he could but would try to then I went to look for some more and when I came back I found that he had succeeded with those old tools in taking the mechanism out of the door. Mr. Kizer was the only one that was with him at that time and then he took that apart exposing a drill hole through the door. At that time the outside was off also. When I came back Mr. Corey [42] showed me a mark on one of the tumblers that looked bright and shiny compared with the rest of the brass—looked like the point of a drill had struck it. After this was found I phoned Mr. Griffith and told him regarding what we had found there and it was late in the evening and I called the police department and asked them to send a man right out to the fair. I then called Chief Turner and told him and he said he would be right out and that he would notify Capt. Burns and bring him too. And soon after that Chief Turner and Capt. Burns arrived up there. "They seemed to doubt—"

Mr. GRAVES.—No, never mind that; just tell what was done. Of course they seem to doubt.

WITNESS.—(Continuing.) Mr. Corey was

(Testimony of John C. Semple.)

asked to explain and show how a safe could be opened through such a drill hole and he did do so. He used a large flash-light and he worked for quite a little while without much success and finally some one suggested that they turn the light off in the ceiling of the vault, so it was turned off. Corey had been working for some time on this and finally let his hand drop with the flash-light in it and it threw the beam or light down on the stand on which the safe rests. The minute he did that these steel drillings, or whatever you would call them, showed up very plainly in the bright light of the flash-light held a few inches away from them. That is the way the filings were discovered. The safe stood on a wooden stand and that wooden stand was a little further out in the front than the front door of the safe—two or three inches or something like that. These filings, when I first saw them, were on the board that extends out beyond the end of the safe—the boards of the platform on which the safe stands. There were some on the floor. I didn't see any more than perhaps a foot or a foot and a half away from the [43] front of it. The police took some of the filings right then and there. They didn't take any part of the safe or its mechanism. The door of the safe was taken off the day following the discovery of the hole and was taken to my office first and then direct to the Fidelity National Safety Deposit Vault and deposited to the order of Graves, Kizer & Graves. It was taken from the safety deposit vault yesterday and put in the clerk's office, and I

(Testimony of John C. Semple.)

brought it into court to-day. There were some of the filings taken. Mr. Goodspeed, Mr. Corey and I went back and took a magnet and got all the filings we could that were left there on the support that the safe is on and from the ground and put those filings in a small vial and Mr. Goodspeed took them and they have been in his custody ever since.

On cross-examination by Mr. WILLIAMS, the witness testified as follows:

The disappearance of the money was found on the morning of September 5th. The presence of the door that has been referred to in the grandstand and also in the auditor's office was discovered on the 7th. The presence of the tape on the bolts of the vault door and the missing screw from the arm was discovered on September 5th and the bored hole which I have testified concerning in the safe door was discovered on the afternoon of September 24th. I first knew of the shavings on the same evening—September the 24th. At the time the shavings were discovered Chief Turner, Capt. Burns and Detective Hudson, of the police force, were present. This was around 7 o'clock in the evening. There are three doors leading into that building from the west. The first is the manager's door, the next is the police entrance and the next is sometimes referred to as the "speed office" or "press office." Anyone passing from the auditor's office going toward the west [44] will have to pass very closely to the police table and it would be rather difficult for anyone to get out, especially if there are many

(Testimony of John C. Semple.)

people around, without attracting attention. The distance from the police desk to the auditor's office would be in the neighborhood of twenty feet. Outside of the passageway coming from the auditor's room down to the point where the police room was and taking the passage and going north there was no known outlet or way of getting out of the auditor's office at that time. Later, however, there was discovered the other way which I have mentioned. However, it was to the south end of the auditor's office a latticed window with steel wires across but nothing had been disturbed at that point. That was examined on the morning of the 5th.

At that time, on September 5th, I investigated and examined, for the purpose of discovering any kind of a clue, as to how the entrance could have been effected, and this was being generally done by the fair officials, the police officers, the employees of the fair and others, and there were several police officers from the detective force of the city of Spokane out there looking things over that day, and they spent practically the entire day of the 5th going over that situation. After that, with the exception of the morning of the 7th, there was not very much work done in examining the premises up to the 24th. Luke S. May, from Seattle, went over the situation out there and spent a few minutes one day but did not make a close examination of the vault. On the morning of September 5th, when the loss was discovered, Chief Turner, Officer Jordan, the finger-print man from the police station, and

(Testimony of John C. Semple.)

two or three other officers from the detective force of Spokane were there. There was [45] also present a Burns detective man. I wouldn't say that they spent a great part of that day; I think they completed their work in a couple of hours. I saw some of these officers going over the interior of this vault, over the walls and flooring and the ceiling; that was all gone over. I did not see any of them using a magnifying-glass. I know they made an examination for finger-prints. The only time I recall seeing Officer Self was the 5th. Detective Burns was there on the 5th and the 25th. From the morning of the 5th to the evening of September 24th there was lots of officers around these platforms and the Fair Association had on the premises some private detectives. The safe stood on a platform nearly as high as that desk and the outer edge of the desk extended out beyond the side of the safe. I did not see these steel shavings which I have referred to before Corey had taken out the combination and had discovered this hole, and did not know of their presence before then. I had not seen them so far as I know between the morning of the 5th of September and the afternoon of September 24th. I had heard nothing of the presence of shavings during that time. There wasn't a great amount of shavings. They were scattered pretty well over the front of that platform. That box is just about the same width as the safe and there were a few scattered all over that. We had a hard time, after the police took what they had, to get any left.

(Testimony of John C. Semple.)

There were very few there. There was also a few on the floor. The boards on which the safe rested were rough. After we discovered the shavings we could see them very plainly. There was no little pile of them. I don't think there was anything lying on the floor on which the safe rested in the way of books or anything unless there was something at the back end. [46] There was nothing within a foot or so of the front end,—nothing in the way of a tray or ticket holder. There may have been some scale weights back under there. I have seen these scale weights around there for a long time; they were not on the floor. I did not look to see whether there were any shavings on the scale weights. I know of a paper-holder—a roll that goes under the safe. I saw that there on the morning of September 5th; it must have been there September 24th but I don't remember seeing it. On the 5th it was in back there. I know that there were lots of other things in back of that safe; I don't know what became of it. The police took a lot of things and they may have taken that for all I know. I did not look at the paper-holder on the 24th to see what it showed. I have had something to do with the books of the fair association. The books of the fair association are in court now.

Q. Can you say whether these books show anything with reference to any work done on this safe in August or September, 1922?

Mr. GRAVES.—To that I object as not cross-examination.

(Testimony of John C. Semple.)

The COURT.—Objected to as sustained on that ground.

Mr. WILLIAMS.—That opens up the question of how the hole came to be there.

The COURT.—That is not proper cross-examination.

WITNESS.—(Continuing.) I never saw the hole in the safe until the night of September 24th and all I know about it is that we found the hole at that time and saw some of these shavings. What I meant by the screw being cut off from the vault door was that it was missing. On the vault door there are two or three [47] bolts that extend upward and engage in the top wall of the vault and that is true also of each side and at the bottom; these bolts are operated by some kind of an arm mechanism. As to one of these bolts that went upwards what I found was where the arm connected with the bolt the screw was missing. The other bolts were still working. The result of this was that when the knob of the vault door was turned all these bolts, with the exception of the one where the screw was missing, went into place or were withdrawn from their place, and with the screw missing, when the knob was turned the door was locked. This did not prevent the locking of the door. The adhesive tape was on the top of the arm that operated this bolt where the screw was missing. I don't know how the adhesive tape came to get there or who put it there. There was the presence of the adhesive tape, the missing screw and the

(Testimony of John C. Semple.)

fresh oil. I do not know how the oil came to be used or who used it. My attention was first directed to the adhesive tape, the oil and the absence of the screw on the 5th—the day the burglary was discovered. I know nothing about how to account for these steel shavings except to say that I saw them there. I found by looking at the boards covering the hole in the grand-stand that two of them appeared to be very old and the cut at the end appeared to be very old. As to the third one of these boards it appeared as though it had been cut very recent and the ends painted enough to hide the newness of it with white or gray paint. I know nothing about when this board was painted. With proper knowledge it would seem easy to see these short boards in the grand-stand. If a person went to look for them they probably never would see them; if they went there and knew they were there you could find them easily. The door was [48] held in place by one screw. From this hole to the hole in the auditor's room it was not to exceed twenty feet. In going under the grand-stand from this hole to the one in the auditor's room for a part of the distance you could stand upright. After this hole was cut in the auditor's room there was something on the inside of the room that was not needed and which did not belong there.

Mr. Reinhard, Mr. Griffith and all the rest of us were very familiar with the interior of this room—had all been with the fair for some years before. This thing that did not belong there was a 2 by 4



(Testimony of John C. Semple.)

extending from the floor up to the height at which these boards were sawed and in a way hide the cutting of the boards. When we found the hole we knew there was no structural reason for the 2 by 4. I have no knowledge as to when the hole was cut there. I never knew of it until Sunday, September 7th. I believe there was an auger hole to start for the cutting of these boards. It was toward the top. At the back of the place where this hole was cut there was a 2 by 4 to which the boards were nailed which was the regular construction of the building. I did not notice whether the auger, as it passed through the boards, struck that 2 by 4. The place where the oil and the adhesive tape appeared on the vault door was on the inside. The door had to be opened for that adhesive tape and oil to be applied. I have no idea how long the screw had been missing. Whenever the mechanism of the vault door was operated it could be easily seen whether that bolt was working or not if the door was opened. The adhesive tape, this missing screw and the oil was in plain view whenever anyone was on the inside of the vault or the door was opened. [49] There was considerable dirt on the platform on which the safe rested on September 24th. The reason for myself, Kizer, Reinhard and Corey going out there on September 24th was the Fair Association had decided to engage Graves, Kizer & Graves to look into the matter for them and Mr. Kizer had an idea that any kind of a mark on the safe was evidence and that there must be a mark of

(Testimony of John C. Semple.)

something there if it could just be found. We were looking for a chance to prove that that had been opened forcibly. Randall and Danskin were regularly engaged by the Fair and had looked into the matter. Graves, Kizer & Graves had been employed a few days before September 24th, and previous to that time it had a lock expert, Mr. Bolt, out there; but on this particular occasion we took Mr. Corey, who is a lock expert, for the purpose of getting another opinion. Bolt had gone over the safe for us previous to this. I did not, when I went out there on September 24th, know there was a hole in the safe. I had no knowledge about the hole at that time. In the auditor's office there is a connection with the toilet and the only way to reach that toilet, so far as known to the fair officials, was through the opening at the entrance from the west, and this toilet was supposed to be used during the night-time by employees of the office. I don't know how frequent the travel was during the night-time but there was some travel and the door of the auditor's office was kept open and the lights were left burning in the auditor's room—seventeen of them—some of them 100 watts or over, and it made it very light in there, and that was kept throughout the night. The police officers on duty at night were not [50] city police but were employees of the fair. Mr. Bolt went out there on September 5th and he changed the combination on both the vault and safe at that time. I believe Capt. Burns, Chief Turner, De-

(Testimony of John C. Semple.)

tective Hudson—there were a number of them—were there and they all saw the steel shavings practically simultaneously. I was standing further outside than any of the others. I stuck my head inside where I could see them; I did not recognize anything as a part of a steel plug; if there was any steel plug or the remains of a steel plug I did not see it.

On redirect examination by Mr. GRAVES, the witness testified as follows:

The edges of the boards to the cut in to the auditor's office looked fresh to me. This hole cut in the grand-stand might be said to open to an entrance to the gateway. All around that fence is planted in shrubs and bushes, some of them growing almost as high as the fence. The man from Seattle didn't do much of anything. I went out to the fair-ground with him in a Dodge car driven by Detective Hudson, Keenan, I believe, was there, Chief Turner and Commissioner Smith's secretary, Dunning,—and I was introduced to this Mr. May, and when we got out there we went in the vault, I believe, first. The safe door was shut. This was some time before the 24th—before the drill hole was discovered. We just looked around the general situation. I asked if they wanted the safe door opened and he said it didn't make any difference but finally I did open it for just a second and it was shut again.

The toilet in the auditor's room was not supposed to be used at night except by watchmen and the police we kept there guarding the grounds and the

(Testimony of John C. Semple.)

building. No one [51] else under the rules was to be permitted to enter the fair-grounds.

On recross-examination by Mr. WILLIAMS, the witness testified as follows:

I think there were about twenty-three or twenty-four on duty at the fair-grounds during the night, and during the daytime, when the fair was opened, there was a multitude of people around. During the year, until two or three weeks before the commencement of the fair there was only one man lives on the grounds, but commencing with that time until the fair opens there are quite a number of employees,—carpenters and workmen of various sorts getting ready. The shrubbery that I referred to—it commences about seventy-five feet from this hole in the grand-stand.

TESTIMONY OF L. F. REINHARD, FOR  
PLAINTIFF (RECALLED).

On direct examination by Mr. GRAVES, the witness testified as follows:

For the last twelve years I used to start the cashier out with seven hundred fifty to one thousand dollars on Monday morning. Then on Thursday I gave him five thousand and on Friday another five thousand, so that he had about eleven thousand dollars at the end of the week to cash these checks. I have my ledger here that goes back ten years and shows that. Toward the end of the week we had to cash checks, pay off horsemen and performers and people of that kind. This loan is entered on my books. The inner

(Testimony of L. F. Reinhard.)

doors of the vault are locked with a key and there is no combination lock for such doors. Before September 4th Mr. Griffith, Mr. Semple, George Nuttleton and myself had the combination to the safe. George Nuttleton was for years our ticket auditor but during this year he had gone about a month before to New York and on that particular day was in [52] San Francisco and I had got Mr. Sutherland in place of him. I saw this tape on the vault bolt on Sunday after the robbery. I put my finger on it and it still stuck. Previous to the robbery I had observed that the vault door had been freshly oiled. I had given no instructions to anybody to oil it. It was the duty of our superintendent, Charles Lamb, to see that everything was in good working order. All the people who had the combination to the safe and Charles Lamb had the combination to the vault. The combination to the vault door was set on two numbers and on the safe four. I said the vault had two. It had at least three and I think four.

On cross-examination by Mr. WILLIAMS, the witness testified as follows:

In addition to the ones I mentioned W. G. Hannon also had the combination to the vault but he wasn't there this year. He was not here in Spokane since the early part of 1924 when I last saw him. So far as I know Mr. Hannon didn't have the combination to the safe. I never gave it to him. On the morning following the robbery I stated that Mr. Griffith and myself had the combination to the safe.

(Testimony of L. F. Reinhard.)

I forgot about George Nuttleton. He wasn't in town and he wasn't in any way interested. I did not then know that Semple had the combination but he told me that he had it afterwards. I will say further frankly that I was not all there after we discovered it. I might have overlooked a trifle which now becomes material.

Mr. GRAVES.—What do you mean by saying you wasn't all there?

Ans. Well, the shock of opening the door and the questions by the police and the insinuations didn't set very well and I wasn't quite there. I might or might not have known that Mr. [53] Semple had the combination. I knew that Mr. Nuttleton had it. I do not carry the combination in my mind from one year to another. I carry a card in the small brief-case or small pocket-book and carry it in my hip pocket. To 1919 I had a little memorandum-book and I carried it there and when I thought I had lost that I had the combination changed and the man who changed it gave me a piece of pasteboard that big which he wrote it on and I carried it in this pocket-book. In 1919 was the only time that I ordered the combination changed. That was all the work that I knew of at that time. I paid a bill for some work done on that safe in August or September, 1922, but I don't recollect it at this time.

I discovered that the bolts to the vault door were oiled about Tuesday before the fair opened. The fair opened on Monday, September 1st or 2d.

(Testimony of L. F. Reinhard.)

The Mr. Lamb that I mentioned was the caretaker and was superintendant and had charge of everything, but the man actually in charge of the store last year was Joe Rudersdorf who was under Lamb.

TESTIMONY OF W. J. HUDSON, FOR  
PLAINTIFF.

W. J. HUDSON, being called and sworn as a witness on behalf of the plaintiff, testified on direct examination as follows:

My name is W. J. Hudson. I am a police officer of Spokane and have been for ten years. I have the things called for in the subpoena to Chief Turner which are produced. I took these myself out of the place and brought them to the police office where they have been ever since. They are in the same condition as when I took them except I took one apart. The one I hold in my hand was the door [54] into the office that came under the table. The boards in question were admitted in evidence as Exhibit 11. There was first attached to Exhibit 11 a 2 by 4 in its widest place which you have shown me which was on the inner side. A little more than the upper half of the 2 by 4 had a notch cut in it and this part of the exhibit rested on that notch and the other ran through a 2 by 4 that was like this that ran clear up to the ceiling and on through. The other end butted right up against here which was a part of the construction of the

(Testimony of W. J. Hudson.)

building. The 2 by 4 that I have here that was attached to Exhibit 11 was not a part of the construction of the building but was put in there. It stood back of the wall up against this 2 by 4 here; it was not on the office side; it was toward the south—the south end of the standard and outside of the office. The other 2 by 4 was on the inside of the office supposed to form the leg of the table. The panel is tongued and grooved stuff finished on one side and I think rough on the other. The grooved, the finished side was on the inside of the office and is the same as the other wood in the east wall of the office just sawed off and set in. The other piece which you show me is the inside covering under the table to hide the cut in these boards which looks like the leg of that table, but it was hid from the inside where it had been sawed off. The other end was already hidden. This piece was used here as a wedge to keep that tight so if anybody sitting at the table would happen to kick this it wouldn't rattle. You can see there at this time where the people put their feet and they had that so it wouldn't rattle and show it. This small smooth strip was used for a wedge as I have just explained. [55]

(The different pieces were marked Exhibits 11a, b, and c. The 2 by 4 11b, the piece on the inside that appeared to form the leg of the table 11c; the pieces used as a wedge were admitted in evidence marked Exhibits 11a, b, and c.)



(Testimony of W. J. Hudson.)

The door from the outside under the grand-stand had these cleats on the back of it screwed on the back side under the grand-stand. These two boards were the end pieces at the very lowest corner of the grand-stand. This is where the cutting was which was dobbed with white paint and earth to make it look as much as possible the same as the others, and this was held in place with just a long screw at the corner. The reason the other two boards were not cut was that it appeared that they were that way at the time of the construction of the grand-stand and could be taken out without sawing. It was only necessary to saw the end of one board. I discovered the outer door Sunday, following the close of the fair. I was there detailed to the case. There was with me one of the men employed by the Fair Association, Mr. Semple. Reinhard was there and Thompson went out with me. He was working inside the building. After I discovered the outside door I went to Mr. Elbick and told him that I thought I had found the outside door and we called Reinhard and Semple and they came and looked. And I told them if they would work the outside wall I would watch the inside of it and we would tap every inch of it and find where that was for the purpose of discovering the inside door. I went on the inside of the building where this inner trap-door was and started tapping at the corner and kept on and he said he thought he had found an entrance and that it was right in

(Testimony of W. J. Hudson.)

that [56] little corner and I went over with a big screw-driver and jamed it into the wood and the door slid right open. Between Friday morning, the 5th, and when I discovered these two doors, I had been in the auditor's office but had examined the inside part of the office and toilet and a few things like that and made an examination of the walls. I was not detailed on the case until Sunday morning. I was detailed at the fair all week but not on the case and with Reinhard once and a while we would go in there when we didn't have anything to do and fool around in the office. I made a casual inspection once and a while. I did not discover the inside door until I did the tapping. It was not visible or apparent to anyone just looking. The door in to the grand-stand was hinged with two leather straps and some little black screws in them. I brought some shavings in which I turned over to Chief Turner. I understand that the Chief turned them over to the city chemist to analyze and supposed he would only use a part of them but in fact he used all. They have some more down there that Detective Hunt got. They are in his possession. Hunt was detailed on the case the next morning after the robbery—I think after we went out there. I don't know how he got them. I know the ones I took off the safe on the morning of the 24th I turned over to Chief Turner and he turned them over to the chemist to be assayed. They are all gone.

(Testimony of W. J. Hudson.)

On cross-examination by Mr. WILLIAMS, the witness testified as follows:

Exhibit 11a was back of the inner wall and underneath the grand-stand. This groove here was cut and not used; it was at the south end of the cut. Nothing fit in that. They cut that to use it and didn't use it for some reason or other. That is, that groove alongside of Exhibit 11 had no purpose so far as we can see. The purpose of the indentation or [57] cut was simply to permit the boards to slide in at that point and hit it. It is in the same condition now as when I first saw it. The cuts were new and they had dobbed it with some kind of a paint mixed with dirt to make it look old. On the inside part of the building the 2x4 that they went alongside of where they started through at the very top showed the mark—it looked like it might have been a punch or something like that—a punch or maybe a nail driven through at the top part. The first board on which they started through was cut with a haek-saw which was very fine, and the rest was cut with a key-hole saw which run off; I didn't find a hole in the door but on the 2x4 in the building which shows a mark of something going through there; it looks like it might have been a nail or a punch but it doesn't look to me like an auger. This 2x4 would be outside of the auditor's office. The ends of these boards look a little older than when I first examined them. The one that looks very old is caused by grease. This door was greased on the bottom so it would slide easy.

(Testimony of W. J. Hudson.)

Another board which had been identified by the witness on direct examination was marked Exhibit 12. All these boards in the hole in the grandstand were very old and the ends of all three are the same as when I found them and they all appear to be very old cuts except the one, and as to that board it appeared to be a very old cut at one end and the other end it appeared to be somewhat recent and as though there was some white paint on it. I attempted to find out where the paint came from. [58] I found white paint on the fair-ground which showed it had been used and I found this in the storeroom. Prior to Sunday I was not on the job at all. I was not detailed to the case until the fair closed. Prior to that I was at the fair-ground on behalf of the police department but was detailed at other work. On Sunday there was with me Officer Thompson.

#### TESTIMONY OF CHARLES LAMB, FOR PLAINTIFF.

CHARLES LAMB, called and sworn as a witness on behalf of the plaintiff, testified, on direct examination, as follows:

My name is Charles Lamb. I reside at Spokane and am superintendent of the fair-grounds and have been such for twelve years. After the robbery I noticed the oil on the vault door. My attention was called to it by Mr. Randall. I had not put it

(Testimony of Charles Lamb.)

there nor delegated nor authorized anyone to do it. If it had been oiled by anyone in connection with the Fair Association I expect that it would have been mine.

On cross-examination by Mr. WILLIAMS, the witness testified as follows:

I first noticed the oil on Sunday about noon. I had never oiled the mechanism of the safe. The Fair Association had quite a number of employees out there. I don't think they could get in the vault. We made it a practice to keep it closed. During the interim between fairs the vault door would be opened only when I went in or someone from the office went in.

#### TESTIMONY OF E. A. LARSON, FOR PLAINTIFF.

E. A. LARSON, called and sworn as a witness on behalf of the plaintiff, testified, on direct examination, as follows: [59]

My name is E. A. Larson. I live at Spokane and am at present a student at Whitman College at Walla Walla. I am a senior there. I have been there four years and graduate this year. During vacations I work for Duncan Electric and Norris Safe and Lock Company. I worked for C. L. Corey when I was in high school and Mr. Duncan. That is all the experience I have had with reference to safes. I have had considerable experience in

(Testimony of E. A. Larson.)

opening safes, in changing combinations and so on. In the month of September, 1922, I was called up from the office of the Fair Association to go out and open the safe of the company. I was then in the office of Norris Safe and Lock Company. Mr. Chick was manager of that company. He was not in town at the time. I think it was Mr. Hannan or Hanna or someone of that name that called me. He told me to go to the Fair—see the caretaker to let me in and open the safe in the vault. I had to see the caretaker to get the vault door opened. I went out, saw the caretaker. He let me into the vault. I wouldn't know that caretaker. He let me in all right. There was nothing the matter with the safe. The combination had been lost. They wanted it opened so they could use it that year. I drilled a small hole to the west of the combination about  $\frac{3}{16}$ ths of an inch in diameter and opened the safe. By drilling a hole and getting a wire in there you can pick up the tumblers and thereby line it up and open the safe. You just line up the tumblers and then draw the bolts. I did not know what the combination was. Whenever you drill that hole in there you can get it at that time whatever the combination is. I drilled right through here, say, 25 numbers. That is divided into 100 numbers so 25 shows down here or at a line drawn horizontally through the center of the dial. [60] And by drilling under this ring here I was able

(Testimony of E. A. Larson.)

to open it. I then returned to the office and secured a new dial rim and a plug and returned to the Fair. I then plugged the hole and placed a new dial rim in position and set up the combination and returned to the office. It is customary to open safes in this way. I have done it frequently and I always afterwards plug the hole and I did that in the usual manner. I couldn't say that the hole was exactly  $\frac{3}{16}$ ths inch. Generally we keep a stock of plugs. You can buy them at a hardware—tapered steel plugs. I went down to the shop and I got the length of one of these plugs and cut it off at the right place and drove it in so it was tight, fairly tight. Ordinarily if the plug is in a conspicuous place and not covered by the dial rim we generally countersink them and put filler in there and paint that over so you can't notice it. In this particular case it was covered by the dial rim so I didn't do that. After putting the plug in in this manner it ordinarily could not be gotten out without drilling it out—redrilling it in that place, or it would be possible to pull it out by a screw extraction or drilling into the plug in the seat of it and turning it out; that is, you would drill a hole in the plug and get hold like you get hold of a cork in a bottle and yank it out; otherwise you would drill it out the same as you would drill the original hole. There is a definite place to drill such holes. Ordinarily on this type of a Hall safe they ordinarily drill at the top of the combination. If you start

(Testimony of E. A. Larson.)

out as far as I did you generally start your drill slanting a little at that point in the middle there—slanting so you will hit the outside edge of the carrier tumbler. On this particular occasion I can't say whether my drill hit the carrier tumbler. [61] I imagine it did where it started through. It might do so. If a mark had been made by my drill on the carrier tumbler it would depend upon whether conditions—whether it would be bright or not. It would be corroded, no doubt, to an extent. It might corrode; I couldn't say as to that. I would think it would get darker and nearer the color of the other metal. In order to take the dial rim off it is necessary to take the tumblers out of the back and pull the key out and remove the carrier tumbler and that removes the dial and spindle. When this is removed there are two screws, I think, that hold the dial rim and it can be taken off and a new one put in its place. I imagine any local concern would sell you a dial rim. Some of them have them in stock. If I have damaged the dial rim in any way I always replace it after I have drilled the hole.

(Witness temporarily excused to be called later for cross-examination.)



## TESTIMONY OF C. L. COREY, FOR PLAINTIFF.

C. L. COREY, called and sworn as a witness on behalf of the plaintiff, testified, on direct examination, as follows:

My name is C. L. Corey. I reside at Spokane and am a safe and lock expert. Have been in Spokane possibly 20 years and have a place of business here. I was called to the fair-grounds last fall concerning the safe. I was out there 2 or 3 days. I was there the Sunday following the robbery and there was a part of the police force, detective force and a representative of the Burns Detective Agency, Mr. Toyer, Mr. Bolt and myself. I did not then make a detailed examination of the safe because it was the concensus of opinion there was nothing the matter with it, so I didn't go through it. [62] I was next there about the 24th. Mr. Kizer, Mr. Semple and Mr. Reinhard came down to the shop and asked me if I had made a detailed examination of the safe and I had to say that I did not, so I rather reluctantly went out with them and we looked the vault over and the safe and at that time I went into it more thoroughly by taking the entire lock out—the lock, keys, carrier tumbler, the dial and the dial rim. The first unusual thing I discovered was that I discovered a drill-mark on the carrier tumbler. I didn't examine that very thoroughly as far as its being fresh or not. I can't state exactly what condition it was in. Then by

(Testimony of C. L. Corey.)

taking the dial out after removing the carrier tumbler I took two screws out of the dial rim and after removing the screws the dial rim did not fall off; I had to pick it off from the top with my fingernails to get it out. That would indicate that the dial rim had been put on there some time before and there was also shavings come out with it underneath the dial rim. Mr. Kizer was in the vault at the time and I told him what I discovered and showed him and he rushed out and got Mr. Reinhard and Mr. Semple and they together called the authorities and waited there some time until they all got out there.

We didn't do anything more with the safe until I discovered the hole. The hole was drilled at what they got out there. I discovered the drilled hole before they came out. After I removed the dial rim we called 9 o'clock or 90 degrees to the left of the center. The hole was approximately—I think I measured that—it is a quarter of an inch hole and the hole led directly into the combination lock and permitted a wire or pick, as we call it, to slide in behind the tumbler, and by turning the dial the door could be unlocked. [63] That is the purpose of the hole. That is the usual way of doing it—either there or at zero. The drill rim did not show any evidences of having been subjected to the drill. The drill had went through the safe itself which was called boiler plate steel. The shavings I found were brass and steel. The drill rim is made of brass. Anyone understands the safe or drill in this

(Testimony of C. L. Corey.)

same place, whether safe expert or yeggman. After finding the hole they notified the authorities, the Chief of Police and the Chief of Detectives and a few more of the detectives out there—I think, Detective Hudson and I can't recall the other fellow, and they came out in time and we did nothing until they got there, and we showed them what we had found. They gathered up some of the shavings and took them away. The following day we gathered up a part of the shavings that was on the floor and on the pedestal that held the safe. We got both steel and brass shavings in what we took and the police got the same. The mark on the carrier tumbler is slightly discolored from what I have seen it before. It would naturally oxidize or discolor. The extent would depend upon how it was protected. Where a plug was put in a drill hole you could drill it out easily or you could drill a small hole in and run a tap in. In putting in a screw in that tap and pulling it out you would have to drill. Following the first method you would drill just the same as if the plug was not there—the same as the original hole. You can drill in part way and afterward the plug will get so it will turn round. Brass oxidizes slower than iron or steel.

On cross-examination by Mr. WILLIAMS, the witness testified as follows: [64]

The material which you hold in your hand is a combination; it is a lock but works by combination—more difficult to open than the ordinary lock where one is not familiar with the combination.

(Testimony of C. L. Corey.)

The combination can be changed any time by the removal of those screws and putting them at different places. When a hole is drilled like this one you get inside the combination the case holds the combination lock. The drilled hole let you only into the combination chamber. Further on is the covering of the combination chamber and if that covering is removed it lets you in to the interior of the safe. The only office which this hole could perform would be to permit a wire or piece of steel to be inserted into these different slots. When you get the tumblers lined up it allows the fence of the lock to pass into the combination. The fence is this flat piece of steel that goes from the knob back into the combination chamber. The small slots in the master tumber are to prevent turning the dial when there is pressure applied against the combination. The fence will drop into one of these slots and turn itself. The purpose is to prevent one not familiar with the combination from acquiring the knowledge of the combination by listening to the tumblers or by the pressure of the fence against the master tumbler. The little abrasion on wearing at the edge of the master tumbler in my mind was a burr on there when it was stamped out and it was filed off to make it smooth. It is something that has existed from the time the safe was assembled and put out. It still looks bright. The oxidization of brass or copper is a very slow process and particularly when the metal is enclosed in a case such as the combination on this

(Testimony of C. L. Corey.)

safe. The presence of moisture would have its affect on it. Looking with the naked eye these filings [65] marks which I referred to look quite bright. At your request I have looked through the glass at the mark which I thought was a drill mark this morning and it still looks quite bright, notwithstanding it is nine months or thereabouts since I first saw it. Through the glass I noticed two or three dark spots on the drill mark. There could be nothing run against it after the drill went in. If some metal bruised it or struck that point it would show evidence of a mark. If it was scratched in some kind of a way it would show under the magnifying-glass. Brass scratches easily. The dark marks I would say was where it oxidized; it attacked that part first—discolored first. I do not think scratches would produce that appearance. On brass the smallest abrasion or the point of a drill mark would be attacked first before the screw part would. If the one who had drilled that hole in the beginning without shifting the combination put in his steel for the purpose of picking up the carrier tumbler or the different tumblers this piece of steel would come in contact with exactly that point. If the steel was put in after the combination had been worked on or changed it would be very much the purest of accident and a very unusual accident if it should strike the same place. A tapered steel plug is a piece of roll steel that is tapered has the big part of the taper about the same size as the drill hole. The outer steel part of this safe

(Testimony of C. L. Corey.)

was approximately half an inch thick. The drill also went through into the combination chamber beyond the drill hole about an inch or an inch and a quarter in length. There are at least three ways of removing a plug in such a hole. One way is to drill it out and in that event after you drill in to where the tapering [66] commenced then the plug starts to turn and is usually withdrawn with the drill. If the drill is of the same size as the plug as it turns round cutting in this metal it is removing steel all the time that the drill turns, and whenever the drill slides under the steel to cut it and it starts to turn you will remove it, pull the plug out with the drill. The affect of that action is that it forces the drill to one side in the hole and the drill starts to cut the wall of the hole and one way would be if the drill is removed without bringing the plug out you would simply drive the plug on through into the combination box. Another way of removing the plug is a very easy one of taking out your combination and just giving your plug a little bit of a tap on the inside and it goes out. It would go out easily that way. The resistance ceases very quickly after the first tap, and with this second method there are no shavings results from that at all. The third method you use a smaller drill and you drill in deep enough to put a tap into it, to put screws into it or threads, and it will usually pull the plug. You have to exert some pulling power from the outside, just pulling on it. The tap turns it and the tap is threaded right

(Testimony of C. L. Corey.)

in. That is not such a difficult job. In that character of an operation the amount of steel shavings that comes from the boring is small. The shavings from this drilled hole would about fill a teaspoon level full. When I found the hole on the 24th I found no evidence of a plug or any part of a plug. The drill—if it was drilling on the plug—would not have drilled out of the plug if it was tapered. He might drill in a small hole clear through. It would have to be a very small size drill. I found no remains of the plug in the hole and no remains of the plug in the combination nor on the [67] outside. The hole is not clean cut on the outside. It would be possibly another drill went through there, because the hole is not true—it is not a perfect circle. Looking through the hole now it follows an exact line throughout. It looks all right there, but in front it does not; it might be possible a second hole went through there. If the dial of the combination was in place with the rim in place there would be no way for anyone, without removing the rim, to know the size of the drill that had been previously used. There are various sizes of drills. Looking through the hole I see no evidences of any remains of a plug on the side. I see no evidences of a drill having sheered off when it came to the point where the taper began. Apparently the walls of that hole have not been destroyed in anyway. Knowing that the hole had been drilled there and it was attempted to drill it at 9 o'clock I probably could not once in a million times exactly center the plug; I

(Testimony of C. L. Corey.)

could come awfully close to it. I am now referring to when the dial rim is on. If I did not exactly center the plug it would show. It would not be possible, probably once in a great many times, if the dial rim was removed, and I saw the plug and had the same size of drill to exactly center the plug and drive the hole on exactly the same angle, and it would be practically impossible to follow exactly the same line. If the dial was removed and I could see what was under the dial I could drill it out so as to not show any evidences of it. I would first center the plug, drill it in and tap it and pull it out, never hitting the walls of the old hole; I would use a smaller drill. I wouldn't attempt to use the same size of drill. If I was trying to drill the safe and did not know that there was a hole there that had [68] been plugged and ran my drill through the dial rim I would learn that there was a plug there just as soon as I got through the dial rim. It would discover itself because after drilling through the dial rim in order to get the hole center where you want it you would have to punch the steel on the inside, that is, when you would discover there was a plug in there before you ran the drill. That has the effect of keeping the drill going in straight. There is no possibility of drilling that hole or drilling such plug if the door is closed without boring the dial rim, go through the dial rim—clear through it. If a burglar were intending to get inside of that safe by drilling a hole through there and



(Testimony of C. L. Corey.)

wanted to leave it in the same situation or condition after drilling the hole it would be necessary, after the drilling was completed, to then take out the combination and take out the carrier tumbler, take off the dial, and he would have to be supplied with a new rim. He would need the dial rim. All dial rims are not the same. The Hall safes are different. It would take me about 5 minutes to get the combination of this safe if the door was open and the combination box in place. It is a very easy procedure. You use a piece of steel through this slot in lining up the tumblers. When I saw the shavings on the 24th they were scattered on the top of the pedestal that supports the safe and some on the floor. They were mixed up with the dust and business papers and rubbish and one thing and another. There was considerable dust and dirt on the pedestal. I think it was Hudson who first discovered them; I am not sure about that; I had not discovered them then—I had not looked for them. I had made [69] an examination of the premises on Sunday following the close of the fair. I don't know where these shavings came from unless they came from the second drilling. I don't know but what maybe someone put them there. They covered a space of about a couple of feet maybe. I don't think the shavings extended over as far as the sides of the safe; I would not be sure about that. I did not see any scale weights or ticket trays. Where you drill a hole such as this in a safe door the steel does not drop straight

(Testimony of C. L. Corey.)

down; it scatters all over dropping on the floor. The faster the drill is moving the farther it throws it. It depends a great deal on the momentum. We picked up some of these steel shavings; they were not in a bunch but were scattered. I didn't notice any particular place where they seemed to be in quite profusion; I had never noticed them there before. My idea was when I went out there that I was going to take everything off the safe—going to take everything out of the safe and satisfy myself that it was all right. I did not know at that time that this safe had been previously drilled. I did not know anything about any work done on the safe in August or September 1922. Nobody suggested taking out the combination. I may have forgotten to take my tools out. I was down to my shop working when the gentlemen drove down and picked me up and I thought I would go out and look it over again. The principal purpose of going out was to see if I could find some mark on the safe showing forceable entrance. When I removed the screws that held the dial rim the rim did not follow and it was that that indicated to me that the rim had been on there some time—been on some little time anyhow. [70] If this had been a recent rim placed on at that place you would expect it to follow immediately. The reason would be the sticking of the paint or enamel, or two bodies kind of coming together in a way. Where the thing has been on a long time the tendency is to stick. I couldn't say how long it had been on. There were no marks on the dial rim.

(Testimony of C. L. Corey.)

On redirect examination by Mr. GRAVES, the witness testified as follows:

When the dial rim was taken off some filings fell out. These could not have fallen out except the dial rim was taken off and the lock taken out. These shavings could have been inside where the plug was in. These shavings in there, wherever they came from, were made either in taking the plug out or after the plug was out. The hole is a scant quarter of an inch. I have just measured it and it lacks 1/64th of being a quarter of an inch. If I attempted to burglarize the safe the place where I drilled would be the same as if I was employed to open it. When I went through the rim I would at once discover the plug. From then on I would know of its existence. I could not see the plug and drill with reference to the plug precisely the same as though I had previously known it was there. A burglar would not have to know anything about it having been there before. In order to drive the plug out you would have to first open the safe door and take out the plug; otherwise the dial rim would stop it coming out. Then you could punch the plug out—drive it out. With the safe door closed it could not be driven out. It would have to be drilled out in one of the ways I mentioned. The carrier tumbler looks to me as though it was only hit by the drill once. The drill mark on the carrier tumbler could be made here by the one who originally drilled the hole or some one drilling out the plug. It ought to show a difference in oxidiza-

(Testimony of C. L. Corey.)

tion,—in two years, seven or eight [71] months it would be very different. The carrier tumbler shows much brighter than the rest. I have a similar carrier tumbler of the same material on which I have put some marks within the last two days. (Witness produced a carrier tumbler.) These are the marks right here.

(Carrier tumbler admitted in evidence marked Exhibit 12.)

I would say there is considerable difference in the brightness of the marks on Exhibit 13 and on the carrier tumbler of the safe. It would be my idea that this could come from the oxidization of the wound on the safe tumbler. I would not want to *take* how long that would take. If the plug was driven out it would not hit the carrier tumbler.

On cross-examination by Mr. WILLIAMS, the witness testified as follows:

Referring to the suggestions made by Mr. Graves in his redirect examination I know that that dial rim was not and could not be in place on that safe at the time that drill hole was made or if there was a plug there at the time the plug was put in. There is a very easy explanation as to how the shavings got in the dial rim which is, there is a certain amount of shavings that are left in the hole after you drill it and after the dial rim is put on on the slamming of the door back and forth would cause the shavings to drop out from in front down into the dial rim. These shavings would rest down in the edge of the rim—the ones which might be jarred back

(Testimony of C. L. Corey.)

into the dial rim by the slamming of the door would be inside of the hole. If that hole was drilled by Mr. Larson in 1922 and a plug was put in there, there couldn't be any shavings, and if the plug was put in there and driven out from the inside there couldn't be any shavings there and if a smaller hole was used to bore into the plug [72] and they in that way extracted the plug, "well, there may have been some shavings in behind the plug; they would have to be very far in. This plug, as a usual thing, is only a short one."

Q. And in the course of two years from the time Mr. Larson drilled this hole in 1922, if there were any loose shavings there they would be jarred loose if they were jarable?

A. If the plug was in there they couldn't get out.

Q. Not if the plug came in contact with them, that is quite true. If the plug came in contact with these and you knew absolutely—at least you know so far as you could know at all—that that plug, if there was a plug there—that that plug has never been drilled out clear through with the same size drill.

A. I don't think so. A tapered steel plug put in fairly tight could not be driven on through without injuring the lock. It would come in contact with the tumbler and fence and the key itself. It could be driven out.

I said that the mark on the carrier tumbler on this safe could only be made in one of two ways. One by Larson when he drilled the safe in 1922, or,

(Testimony of C. L. Corey.)

perchance, by the one who drilled out the plug, if he did drill out the plug. It could be done in other ways; if you wanted to it could be taken out of the safe and laid down on some object and the mark drilled. What I referred to were possibilities that could have happened in this case. The size of the drilling on Exhibit 13 enables me to see a little bit better as to brightness than on the other tumbler. It would probably show up brighter on this tumbler if the drill mark was larger. [73]

TESTIMONY OF E. A. LARSON, FOR PLAINTIFF (RECALLED—CROSS-EXAMINATION).

E. A. LARSON, on cross-examination by Mr. WILLIAMS, testified as follows:

It was sometime about the last of August—three or four days before the fair would open in 1922, when I was called to open the safe. The stenographer of Norris Safe & Lock Company took the order and I do not recall that I got into communication with the fair officials. I went out and met the caretaker who instructed me what to do. This was not Mr. Lamb. There were two or three other men in the office who were cleaning up. The caretaker opened the vault and let me in. As I remember it, he did this by operating the combination. I did no work on the combination. The instructions was to see the caretaker and open the small safe in the vault—that the combination had been lost. The safe seemed to be in perfect working condition. I might have started to drill at the zero point at

(Testimony of E. A. Larson.)

the top outside of the dial rim and would not go through the dial rim at all. If you are in a position to have an extra dial rim it is easier to drill where I did. Otherwise you drill at the top and don't destroy the dial rim. Drilling at the place I did there is no way of avoiding spoiling the dial rim. You might bend them up and drill under but the dial rim is ruined; it could not be concealed that it had been mutilated or bent. The dial rim now on this safe has not been mutilated in any way. The caretaker was in and out while I was doing this work, and when I went down town I left the safe open; the parts were out at that time. I did not have a new dial rim with me. Down town I got a new dial rim and a steel plug. This was a tapered plug—a small piece of cold roll steel about the size of the hole, maybe, a little less than an inch in length. It tapered all the way. [74] It would depend entirely on how hard it was driven as to whether it is pressing against the wall of the hole except at the outer edge of the plug. I drove it in until it was flush as I recall it. It drove in fairly easy but was quite tight—fairly tight. I did not attempt to drive it in particularly solid. I drove it in to a place where it was flush. Even if I had attempted to drive it in particularly hard it would be a very small point at the outer edge where it would be pressing against the wall of the hole. I put in the plug up and—the dial rim and I can't recall whether I left the safe locked or unlocked. The parts were out at the time I went down town after the dial rim.

(Testimony of E. A. Larson.)

I don't remember whether I changed the combination. I reported to no one outside the caretaker that I was through. Three of them called at the office a day or so later for the combination. I do not know any of these parties outside that Mr. Hannan was one of them. I couldn't say who the gentleman was I delivered the combination to. I had it written out and delivered that paper at that time. I couldn't say whether Mr. Griffith, Mr. Semple or Mr. Reinhard was there. This was after I was through with the work. I had several drills with me. I did not look to see what size I chose for the work. It might have been smaller or larger than a 3/16ths. I probably hit the carrier tumbler in drilling the hole; you would naturally strike it. If a tapered plug was driven in and was then being bored out from a hole like this it would be possible for the drill to come in contact with the carrier tumbler if you drilled a smaller hole than the plug and the plug stayed intact. That would have to be done with a smaller drill. If you were drilling the same size hole after you [75] drilled past the place where the tapered steel plug fitted the edge of the hole the plug would become loose at that point and it would tend to spin and the drill might slip off. If the pressure of the drill should force the plug through the plug would be between you and the carrier tumbler, so the drill could not come in contact with it until it was drilled out.



TESTIMONY OF C. L. COREY, FOR PLAINTIFF (RECALLED—CROSS-EXAMINATION.)

C. L. COREY, on further cross-examination by Mr. WILLIAMS, testified as follow:

If a plug is being drilled out it would not strike the carrier tumbler.

Q. Then you know, do you not, absolutely, that if there was a plug in that hole and someone was drilling it out that that mark on the tumbler would not be made by that drill?

A. No, the drill would not go in that far.

TESTIMONY OF ROSE W. BROWN, FOR PLAINTIFF.

ROSE W. BROWN, called and sworn as a witness on behalf of plaintiff testified, on direct examination, as follows:

My name is Rose W. Brown. I have been a stenographer for Randall & Danskin for 2½ years and on October 17th I typewrote that letter from the dictation of Mr. Randall and enclosed in the letter the proof of loss in this case to the Fidelity & Deposit Company.

(It was admitted that they were received within the time fixed by the policy.)

(Letters admitted in evidence marked Exhibit 15:

We received that letter in reply dated October 23, 1924 and the proofs of loss were returned.

(Testimony of James A. Williams.)

(Letters admitted in evidence marked Exhibit 15: Letter of October 27, 1924, signed "Spokane Interstate Fair"; answer of October 28, 1924, admitted in evidence as Exhibit 16; letter from Randall & Danskin and Graves, Kizer & Graves addressed to Mr. Williams of October 29, 1924, admitted in evidence as Exhibit 17; letter from Mr. Williams of October 29, 1924, admitted in evidence as Exhibit 18; letter to Fidelity & Deposit Company signed by attorneys for plaintiff of October 30, 1924, admitted in evidence as Exhibit 19; letter of November 10, 1924, from defendant to Graves, Kizer & Graves admitted in evidence as Exhibit 20; letter from Mr. Williams to Graves, Kizer & Graves of November 14, 1924, admitted in evidence as Exhibit 21.)

#### TESTIMONY OF JAMES A. WILLIAMS, FOR PLAINTIFF.

JAMES A. WILLIAMS, called and sworn as a witness on behalf of plaintiff testified, on direct examination, as follows:

I saw all the correspondence with the Fidelity & Deposit Company in due course. I can't say that the letters you have introduced are all between you and the company upon that subject or between me and your firm. I couldn't say without checking; I haven't made a check. [77]

TESTIMONY OF C. L. COREY, FOR PLAINTIFF (RECALLED—REDIRECT EXAMINATION).

On redirect examination by Mr. GRAVES, C. L. COREY testified as follows:

When I was out there Sunday morning or at a later date I examined the vault door. The upper bar that is connected with the main draw bar was disconnected leaving the balance of the bolts operating except the top one, and by closing the door we noticed that the door was sprung in such a way that the top bolt would not go into its recess in the proper way which would cause a noise if it was opened—cause considerable noise because the top of the door had to be forced in in order to close it, and by cutting off that bolt or taking out the screw that operated that bolt that would prevent that bolt from acting and would stop that noise. The tape on the bolt was common friction tape commonly used with electric work. It was put around the bolt to prevent the other bolt from clanging against it and making a noise. The tape was fresh; I wouldn't want to say how long it had been on there but tape that has been on a year or more would be so dry that it would not stick. This was sticky when you put your fingers on it; it was fresh tape.

I did not look at the combination of the vault. If it is a two combination it could possibly be read by anyone that understood reading lock combinations in 25 or 30 minutes. If it was a four it would take you several years—maybe longer than that.

(Testimony of C. L. Corey.)

On recross-examination by Mr. WILLIAMS, the witness testified as follows: [78]

If the screw had been in this bolt to the vault there would have been some difficulty in closing the door. The top of the door was slightly sprung out and there had to be enough pressure exerted in some way or other when the door was closed so as to pull that in. When the screw was removed that difficulty was removed. If there are only two tumblers there are comparatively few varieties of combination; you have the tumbler and the carrier tumbler. The last number can be easily determined without any guesswork. That leaves you only one to go around the circumference—one to 100 to get the other number. As the number of tumblers increases they multiply into the thousands and hundreds of thousands, and when you get quite a number of them they practically cannot be figured. With either the safe or the vault door it is easy to get the combination if the door happens to be open.

On redirect examination by Mr. GRAVES, the witness testified as follows:

Taking the combination which you show me—two tumblers and the carrier tumbler—one who understood it might read the combination from the outside anywhere from one hour's time to a day or two. On a Yale combination on a vault door it is a usual thing to set them on numbers of 5, 10, 15 and 20, or 15, 25, 35 and so on; they are not set on odd numbers so that it is easy to pick the combination

(Testimony of C. L. Corey.)

on a vault door as a usual thing. This one, I believe, was set on odd numbers—well, that is, 60, 10, 93. 93 is the carrier tumbler; they could tell that. That would be very easy to pick. An expert ought to get that in an hour's time easily. [79]

On recross-examination by Mr. WILLIAMS, the witness testified as follows:

In the combination that Mr. Graves showed me in the book there is one tumbler more in the vault than in the safe. In the vault there is five with the carrier tumbler.

In answer to Mr. Graves' question I was proceeding on the theory that two of them were together—worked together, with the result that it was the equivalent of a 3-tumbler combination. The vault would have one tumbler less operating than the safe. It had a dial in connection with it of 100 numbers. I could open it in from an hour to a day. I would start on multiples of 5, 10, 15, etc., then start from 10, 30, 40 and 60. 60 is the first number on this one. If that don't open it well I could drill and open it. If the combination was set on numbers other than 10, 20 or 30 that would make it harder and more difficult. If the numbers were 73, 19, 3, that would have taken a great deal longer. It is hard to tell how long—hard to estimate it. The reason for my remark a while ago about setting it on 5's and 10's that is the customary way on vault doors which is not the customary way on safe doors. If they did not follow the custom it would be harder to open. As to the number given by

(Testimony of C. L. Corey.)

Mr. Graves not set on 10 or 5 you can determine that without testing for it. If it just happened to have been the case that it was an odd number on these other two you probably would spend many days before you could open it.

Q. In other words the question of how someone could open it from the outside would depend a great deal upon good luck and things of that sort.

A. Outside of drilling for it. [80]

On redirect examination by Mr. GRAVES, the witness testified as follows:

If the numbers of the safe were 4-7-86-49, I could possibly, without drilling for it, open it in a day.

TESTIMONY OF L. F. REINHARD, FOR  
PLAINTIFF (RECALLED—REDIRECT  
EXAMINATION).

L. F. REINHARD, recalled as a witness on re-direct examination by Mr. GRAVES, testified as follows:

Since testifying as to the numbers on which the vault was set I have gone and secured the combination. That was not the combination of the vault at the time of the robbery. I said there was—first said two tumblers and then I said I wasn't sure. I said about three or four tumblers combination on the vault door but that my book would show it. Now, when this combination was changed it was changed to different numbers but the same number

(Testimony of L. F. Reinhard.)

of tumblers. On the vault door I found three numbers to open it; that is what you call a 3-tumbler combination and the safe was four. At the time of the robbery there was three numbers on the vault. It is not these three which you show me. I have not got that combination; it has been destroyed and I do not remember it.

(The safe and lock in controversy were admitted in evidence and marked Exhibit 22.)

Plaintiff rests.

Mr. WILLIAMS.—I move to withdraw from the consideration of the jury the testimony given by Mr. Corey concerning the time in which the combination of the vault door could be opened with certain numbers that were submitted by Mr. Graves as it later developed that these numbers were not the numbers of the vault at all.

Mr. GRAVES.—I haven't the slightest objection.  
[81]

The COURT.—The motion will be granted and said evidence stricken.

## DEFENDANT'S CASE.

### TESTIMONY OF WESLEY TURNER, FOR DEFENDANT.

WESLEY TURNER, called and sworn as a witness on behalf of defendant testified, or direct examination, as follows:

My name is Wesley Turner and am and was on September 4th and 5th last Chief of Police of the City of Spokane. On the morning of September 5th

(Testimony of Wesley Turner.)

I visited the fair-ground in connection with this money lost. I went out with the driver and arrived about 8 or 9 o'clock on the morning of the 5th. There was already on the scene Detectives Hunt and Self and Mr. Jordan and there might have been one or two others. These officers I have mentioned were connected with the police department of this city—Hunt and Self, members of the detective division and Jordan in charge of the identification work; that has to do with finger-prints and things of that sort. As I remember it I spent most of the day out there. I made several visits. On subsequent days I went out and made investigation. I don't know that I can give the exact dates; I made a number of trips prior to September 24th.

I have specialized in the identification branch in criminal or police work. I had charge of that work for some twelve years prior to becoming chief. On the morning of September 5th Capt. Burns told me he had assigned two men to the case. When I arrived there I went directly to the office and I believe I met one of our officers in the office and I proceeded with him to the vault. Jordan and Hunt, were, I believe, in the vault at that time. I stayed [82] there a few minutes. I tried to assist Jordan in his investigation of the safe,—that is, I looked the safe over and examined several articles with a magnifying-glass with a view of finding finger-prints. I was looking at a small iron roller—I don't know whether it would be a



(Testimony of Wesley Turner.)

ticket roller or just what the purpose of it was. Jordan has it here.

(Instrument marked Exhibit 23 for Identification,)

Exhibit 23, for Identification, is, I think, the instrument that I examined under a magnifying-glass.

(Exhibit for Identification 23 admitted in evidence.)

When I first saw Exhibit 23 Jordan had it in his hand and on my entrance into the vault, and after I spoke to him he handed it to me together with the magnifying-glass and I examined it for finger-prints. When I handed it back to him I think he set it back underneath the safe—the edge of it. The safe sit up on a sort of a little stand and I believe that the stand extends out just a short ways, and he put it directly under the front—there towards the front. I can't say whether it extended out in front of the safe. I consumed but a few minutes making this examination with a magnifying glass. I was looking for finger-prints. If there had been any steel shavings on this tray I think I would have seen them. I am satisfied there were none—no steel shavings on it. I looked over the surface on both sides for finger-prints. It was not kept flat; I turned it around in my hand and looked at the edge different directions and held it up to the light.

I was out to the fair-ground on September 24th when this drilled hole was found. This Exhibit 23 was still there at that time. I saw it. I did

(Testimony of Wesley Turner.)

not pick it up and look at it. There were a number of steel shavings on it at the time. [83] I could see them all right and would not need a magnifying-glass. On September 5th there were a number of articles under the safe that I examined. There were a number of large buttons that they wear on their coats out there at the fair. I picked up several of these and looked at them and I believe there were some papers and a number of different things,—I don't remember all of them. I didn't see any steel shavings on any of them. If they had been there I probably would have seen them. I couldn't say whether those buttons were still there on September 24th. If there had been any steel shavings scattered around there on the stand on which this safe was resting I think would have attracted my attention. If I had found anything of that sort I would have tried to find out where they came from. I did not discover the presence of any steel shavings on that day or on any of those subsequent times until September 24th. I went to the fair-ground on the afternoon of the 24th when Mr. Semple called me. Mr. Kizer, Mr. Semple, Mr. Reinhard and Mr. Corey were there I went out with Capt. Burns and Detective Hudson and I believe there were one or two more already out there. After going on the ground that day I discovered the steel shavings. Capt. Burns and Detective Hudson preceded me into the vault. Mr. Reinhard stopped me to talk for a minute and after exchanging a word or two with him I stepped in.

(Testimony of Wesley Turner.)

The men were gathered around in front of the safe and I believe that Mr. Corey was explaining how he happened to find this hole and I stepped up to this little circle of men around the safe and looked over Detective Hudson's shoulder. I glanced at the safe and I noticed the shavings at that time. My eyes were only just a few feet away; I don't think it was four feet—four or five. I hadn't heard of the shavings being [84] discovered before them. I had no difficulty in seeing them. They were present along in front of the safe on this little shelf and as I stepped back I noticed them on the floor. As soon as I discovered the shavings I touched Detective Hudson on the shoulder and asked him to step outside.

We were there on September 24th fifteen or twenty minutes, I should judge. I don't think any peculiar lighting effect was necessary in order to see the shavings. During all the time I was there I could see them easy. I noticed no peculiar lighting effect at that time. When I examined the premises between the 5th and 24th I did not devote any great deal of time to the interior of the vault; I simply glanced at the walls and examined the small safe pretty thoroughly. I discovered no marks at all in the vault-room. When I made the examination on September 5th there was a single electric light in the vault. I may have used a flashlight, Mr. Jordan carried one in his outfit. Outside of that I did not use any light other than was in the vault.

(Testimony of Wesley Turner.)

On cross-examination by Mr. GRAVES, the witness testified as follows:

I don't believe I would be able to state the exact time I was there on the morning of September 5th; it might have been 35 minutes or it might have been an hour. During that time I was in the vault with the officers for a while and afterwards I went out and talked with some of the officers of the fair. I probably talked to the different members of my force that were out there. I looked around the vault, examined the safe; I looked around the office and a little bit at the different doors, openings. I believe that is all. I was back again that day—I think in the afternoon. [85] I was at the police headquarters at the fair-grounds and was in and out of the office. I probably made a little further examination there in the vault and then I was in the office used by the fair management for a while. I did nothing else. I just sat and remained there. I was out again later in the day. I made several trips out there that day; it may have been three or possibly four. I don't think after this first time that I made much further examination on that day. Probably the only examination was in the morning. I believe I was out again Saturday and out again Monday; I wouldn't be sure about Monday. On Saturday I did pretty near the same as I did on Friday. I think I was in the vault that day with one of the members of the prosecuting attorney's office, and I talked with the different men standing about out there. I don't recall that I made any

(Testimony of Wesley Turner.)

special examination. I went out Sunday, the day that the trap door was found, and I examined these doors and was under the grand-stand on the race-track. I think that is all. I wouldn't be positive I was out there Monday. I was out after that time and before the 24th. I can't give you the exact date. I believe I was out there two or three times. I went out with different members of the prosecuting attorney's office and at one time with a private investigator. I did nothing special, just accompanied them on their trips. I did not make any further investigation. Probably all of the first-hand information I got was on Friday and Sunday. I don't recall that I obtained anything special at any other times. On Friday and Sunday I made no special investigation of the office; I was in there and kind of looked over the walls. I don't mean that I went up and felt of them. I stood around in there, glanced at them, kind of examined them. [86] On Saturday I did nothing further or special except that I had my eye out for any place that might have been entered. Prior to Hudson calling me out I did not know anything about the doors to get into the office that he had discovered. I looked at the interior of the vault—looked at the vault door. I did not see anything special about the vault door on Friday except the fresh tape on one of the bolts. That is all I noticed about the vault door. The top bolt had been disconnected. Someone called my attention to the fact; I do not remember who. I looked at the dial

(Testimony of Wesley Turner.)

of the safe thoroughly; it looked like any other safe door. I examined the door for finger-prints. It was not full of finger-prints; I couldn't find any on it. The fellows that had been turning the knob probably left a mark there. There is a difference between finger-marks and finger-prints. A fellow taking hold of a knob like this and turning it would not necessarily leave finger-prints. I could not see any finger-prints on this knob or on the door; it appeared to be pretty clean too. There were none that I could find; I couldn't see any on the handle. If they had been there I think I would probably have seen them. I had a microscope looking for finger-prints. I don't know whether I am a finger-print expert or not; I understand it. I didn't find any finger-prints on the whole safe. I tried the lock on the safe to see whether it worked; it seemed to. I looked at the inside of it and swung the door back a couple of times,—that is about all I recall now. I was looking for anything. I was not in particular looking for shavings; I wasn't looking for them more than anything else. I was out there to make an investigation. [87] I never noticed any drill hole at that time. I feel pretty sure I would have seen it if there was one and it wasn't covered up by something. I will say there was none. I didn't look for shavings. When I picked this roller thing—it is a receipt holder—I was just looking for finger-marks. I couldn't find any on there. I handed it back to Jordan and I noticed him place it back under the safe. I can't say ex-

(Testimony of Wesley Turner.)

actly whether he put it clear back under the safe or left it partly sticking out. I do remember he set it, or pushed it, back under. I didn't notice particularly whether it went clear under. After seeing it on the morning of the 5th I noticed it there the evening I was out. It was under the safe. I can't say whether it was in the exact place. I didn't pick it up or look at it again. I can't say that I paid any special attention to it on Sunday or on the succeeding days when I was there. I only picked it up and examined it the morning after the robbery. The second time I was out I think it was about the same place where the officer put it. As I recall it the vault is lighted by one light in the ceiling or hanging on a drop cord; I expect it was in the middle of the vault—I didn't pay any particular attention to the light. When I got there on the 24th Corey did not have a flash-light in his hand holding it this way; he was not trying to show the officers how one could pick the combination from that hole that was drilled in there. He was standing at the end of the safe talking to me not doing anything. I believe the ceiling light was on. The ceiling light was not put out at that time. When I went back in the vault after talking with Hudson on the outside the light was put out as I remember and Mr. Corey worked on the combination through this hole. I examined this tray or roller the first morning after the robbery through a magnifying-glass. [88] There are no shavings on it now to speak of. There is a little piece right here, I

(Testimony of Wesley Turner.)

believe; that is all I can see. The first morning I was out there I was not looking at it for shavings. I simply picked it up and examined it with a magnifying-glass looking for finger-prints. I can't say whether some bright specks now on the tray are steel shavings; they are too small. The ones that I saw, some of them were the size of the head of a pin and some a little bit larger. When I went out there on the 24th you could notice that there was a spoonful of shavings on that floor there. Well, this was sitting under the safe and there was a scattering of shavings on that part in here. I didn't touch it; I just looked in there and it was down this way. I didn't attempt to estimate the number of shavings. They were so that you could notice them very plainly—a scattering of them. There wasn't a great quantity; no, I couldn't tell you how many there were.

Q. There was not a great quantity of shavings anywhere was there?

A. Yes, there was considerable in front of the safe.

They were very plain, I think—there were more than there are in those two little bottles. I wouldn't say whether there would be as many as one of those bottles full; I couldn't say how much there is in those two little bottles without looking at them. If the contents were taken and scattered along in front of this desk here and this projection it would look like it was scattered all around there; you can scatter them around, yes. I don't know whether if they



(Testimony of Wesley Turner.)

were scattered it would look like they were scattered all around or would give that impression. I don't know whether that small quantity would make very much of a showing or not. [89]

On redirect examination by Mr. WILLIAMS, the witness testified as follows:

When finger-prints are made on an object you can take them off. You can take all those finger-marks off of the sace of that safe with a cloth. You could put something on there—dampen the cloth a little bit, put a little bit of oil on it. I expect if you would rub hard enough you would get most of the finger-prints off without putting oil or water on the rag. After I discovered the shavings on September 24th I told the others there in the vault-room about it within a very few minutes.

On recross-examination by Mr. GRAVES, the witness testified as follows:

An expert burglar in handling a safe does not necessarily wear rubber gloves. He can, I suppose. I don't know whether he frequently does. If he does he doesn't leave any finger-prints through the gloves. Any handling of that knob would be pretty apt to erase the finger-prints on it, but it would leave others if it was done with the naked hand. On the knob or door there it is pretty hard to leave a finger-print—it is more of a smear; they are turning the knob with their fingers; it is hurling around in their fingers. I don't know whether there would be finger-prints there or not; that is the reason I ex-

(Testimony of Wesley Turner.)

amined it, I didn't know that if some one had used their naked hand, whether it would leave a fingerprint before I had looked; there was a possibility. If a burglar or somebody else wore gloves to manipulate it it would be pretty apt to smear them so that I could not detect them. [90]

#### TESTIMONY OF A. L. JORDAN, FOR DEFENDANT.

A. L. JORDAN, called and sworn as a witness on behalf of defendant testified, on direct examination, as follows:

My name is A. L. Jordan. I have been connected with the police department of Spokane for nearly ten years and specialized in the identification bureau for a little over four years. On September 5th, 1925, I went to the fair-ground for the purpose of investigating the loss of money and arrived there, to the best of my recollection, between 8 and 9 o'clock in the morning. As I recall it Detectives Hunt and Self were then there. I went directly to the room which contained the vault. As I recall it the vault was closed until I arrived. After it was opened I think Mr. Reinhard proceeded me into the vault. After being told what had happened I made an investigation of the outer door and safe inside the vault and the articles that I was told had been disturbed inside the vault,—some wooden trays, as I recall it used for storing papers and tickets, possibly. As I recall it they were sitting to one side of the safe. I examined the safe to see if

(Testimony of A. L. Jordan.)

there had been any force used in opening it, and for finger-prints which may have been left upon its surface. I examined the ticket-holder. I did not find any marks on the safe of any force that had been used nor finger-marks on the safe. Exhibit 23 is the ticket tray that I refer to; that has been in my possession since the 25th of September until one day last week and I brought it here this morning. On the morning of September 5th, as I recall it, it was sitting up on the stand upon which the safe rested, and immediately under the front side of the safe. I could not say whether any part of it extended out from under the safe; it was sitting up on the stand near the front so that it was visible to one standing in [91] front of the safe or above the box. I picked up the tray that morning and when I got through with it, as I recall, I set it back in about the same position it was when I picked it up. I did not see this tray under the safe on September 24th; I was not there on that occasion. I made a careful examination of the tray or ticket-roll after I picked it up, which necessitated holding it in different positions, looking at all sides of it from different angles. I had a small magnifying-glass; it was held at times in a position where it would be on a slant or turning over. I did not at that time discover the presence of any steel shavings. I presume I would if they were present. I did not find any finger-prints on the safe door and did not see any steel shavings scattered around on the floor on which the safe rested. I looked at the flooring on

(Testimony of A. L. Jordan.)

which the safe was resting in a casual way. I did not discover any at all there. On making this investigation there was an electric light inside the vault as I recall it. I also used my flash-light. I had it at times while in the vault.

On cross-examination by Mr. GRAVES, the witness testified as follows:

I had examined the door of the safe. I observed no drill hole there. There was none visible. I would have to see it before I could conclude there was one there. When I saw none I certainly concluded there was none. I did not look for shavings or drillings naturally. This tray had been in my possession since September 25th; as I recall it it was given me by Prosecutor Leavy. I did not bring it in the day after the burglary when I saw it. [92] I did not attach any importance to it then. I brought it in on September 25th at the request of Prosecutor Leavy just because he asked me to; he told me to keep it in my possession until this trial. I don't know whether when I found it first it sat clear under the safe or not; it might have set out part way. I don't know how far I put it in when I put it back; I was not particular about where I replaced it or where it was sitting. I was only interested in seeing whether there was any finger-prints on it. I am considered a finger-print expert. It is possible that a man handling the mechanism of this safe—the combination knob and handle would leave no finger-prints. The manner in which you have taken hold of this knob and

(Testimony of A. L. Jordan.)

turned it is about like anybody would take hold of it. You would not necessarily leave finger-prints that you would take. It would not probably do so. You probably would not leave finger-prints. To make make a finger-print on the lock handle you would have to press your finger on there without blurring it.

(Witness indicates method of putting finger-prints on without blurring.)

You could accomplish the same results with your hand in different positions. I do not mean to tell you that finger experts, to find a finger-print after a burglar, bare-handed, has worked on a safe he has got to do anything like that. He would have to have placed his fingers upon that in a certain way. He would have to put his finger on there. It could be done this way and he could do it this way and any other position in which he would put his finger there. A burglar does not necessarily have to try to make a finger-print so we can find it before he would leave any. I couldn't say that if this safe had been locked every night and unlocked every morning for [93] for several days by a man doing it in the ordinary way in which a man will, sometimes taking hold of it one way and sometimes another way but has just been doing it twice a day for several days that there would probably be no finger-prints there. Ordinarily in turning the dial one would not leave any finger-prints. If a man took his fingers and

(Testimony of A. L. Jordan.)

shut the door sometimes he would leave finger-prints. I don't remember observing any there. I made a careful examination. I couldn't find any finger-prints on that safe from beginning to end. Burglars have been known to put on some kind of a glove when they are fooling with a lock. In a good many cases that's the way they beat finger experts. I don't know whether all expert burglars do that; not all that I have tested do. If they put on a glove and handle the combination knob it would be very apt to erase the finger-prints of the man who customarily handled it. I made an investigation of the outside office where the auditor stays. I investigated to see if there had been any entrance forced through any window—that was all. I looked at the walls only in a casual way; did not make any particular examination of them. I made an examination of the vault door. I found nothing. I examined the vault door to see if it had been tampered with and found nothing out of place,—the vault door and it's mechanism, and it seemed to be all right. I examined it just about as carefully as I examined the rest and as carefully as outside of the use of a microscope as I examined this tray. I didn't find that a bolt had been taken out of one of the principal locks and that they had been wrapped up with tape. [94]

On redirect examination by Mr. WILLIAMS, the witness testified as follows:

There is a difference between finger-prints and

(Testimony of A. L. Jordan.)

finger-marks. A finger-mark would indicate that some article had been touched with the hand; a finger-print would show the ridges of the skin of the finger which had touched the article. For the purpose of getting a finger-print that is useful to an investigator we must have a print that shows the lines and pattern of the print of the finger. If when the particular finger was placed on the object it goes forward or backward in any way that blurs the lines so it just makes a mark out of it rather than a finger-print. At the time Prosecutor Leavy brought this ticket tray to me and requested me to keep it I examined it again. There was then steel shavings on it—not a great many; they could be easily seen. I needed no glass for the purpose. When I examined the windows in the office there was no evidence there of anyone having gone through the window. My examination led me to believe that the windows had not been disturbed. No dust that was on the window was disturbed.

On recross-examination by Mr. GRAVES, the witness testified as follows:

I don't think any of the dust on this safe stand in front of the safe was disturbed in any way on the morning of September 5th. On the evening of September 24th I don't recall whether any of that dust had been disturbed. The surface of the stand upon which the safe rested was such that any dust moved there would not be readily noticeable. If anyone had taken their fingers fumbling around

(Testimony of A. L. Jordan.)

there and working round there they would have got their fingers full of slivers. I don't think anyone working around there would have left marks in the dust. I think the dust would have settled below [95] the surface that he would amined this tray since for finger-prints. I couldn't tell whether it would be full of finger-prints unless I would make a careful examination. The proba-have touched with his fingers. I have never ex-

TESTIMONY OF C. T. THOMPSON, FOR DEFENDANT.

C. T. THOMPSON, called and sworn as a witness on behalf of defendant testified, on direct examination, as follows:

My name is C. T. Thompson. I am a police officer of the city of Spokane—the plain clothes department, known as the detective department, and have been a police office about 24 years and in the plain clothes department most of the time since April 1905. I went to the fair-grounds on Sunday morning with Officer Hudson. That was my first visit to the scene of this loss. We entered; I went to the door of the vault with Hudson. We looked over the outside of the door and on the inside, but I did not enter the vault at that time. About ten minutes later I entered the vault. Hudson was there. Hudson was working just at the left of the vault door and I helped move several articles, rolls of papers or tickets around there on the floor



(Testimony of C. T. Thompson.)

and lying on the west side, and he was sounding the west wall to see if he could find where there was anything had been removed in the wall. I assisted in that work. I would say I was in there 30 minutes, possibly a little longer and possibly not that long. We examined the safe and the things about the safe. The safe was open to us and we looked in the safe—looked over it for any marks of violence that might have been on it—whether it had been tried to be jimmed or anyone had tried to blow it or anything of that sort. I did not find any marks of that kind. I wouldn't say that I looked particularly at [96] the flooring on which the safe rested. I couldn't help but look at it while I was right in front of the safe. The safe sat up quite a little ways on a kind of box and I wouldn't say positively, but I think about four inches projected out. I was right there in front of it and saw all the interior of it and looked under the safe. I did not see any steel shavings about the safe or under the safe. If there had been steel shavings there at that time I couldn't help but see them. I think I can safely say that I am familiar with steel shavings. I have investigated several safes where they have been drilled. If I had seen any there I certainly would have become suspicious because we were requested to see if we couldn't find some marks of violence on either this safe door or the vault door. I don't know who the man was that made the request, some one that worked around

(Testimony of C. T. Thompson.)

there, and then there was a heavy older man—Mr. Reinhard, I believe. This was Sunday the 7th or 8th. I think I was in the vault right around thirty minutes—the outer door of the vault and inside. Along in the evening I was out there again. I didn't do much around the vault at that time.

On cross-examination by Mr. GRAVES, the witness testified as follows:

Someone out there requested me to find some evidence of marks of violence on the safe. In complying I examined the doors of the vault, the outside door and the inside. We examined the top, two sides and the front of the safe. I could not see the back as it sat against the wall. We examined it—looked it over, and also when the door was opened. That is all we did about examining the safe for marks of violence. I did look under the safe. I don't know as I could see what I was looking for. There were some pieces of iron or something under there was all that I saw under the [97] safe that I didn't move or touch. I don't know as I can really explain what I was looking for under the safe. In our line of business if we go to look something over we look it over as thoroughly as we can. Someone had suggested that I see if any violence had been done to the safe. I have had some experience in looking into safes that have been burglarized. I wasn't able to take the combination out and the rim off. We sent for a man to come out there and examine the lock, I

(Testimony of C. T. Thompson.)

did not request him to take it out. I can't say that anybody did. I went to Capt. Burns and asked him to have a locksmith come out there. I can't say that I heard anyone request him to take the lock out and I didn't see him do so. I don't claim to be an expert detective in safe cracking. I have had some dealings with it over a long period as a policeman. I asked the Captain to have a man brought out there who knew what locks were to see if the combination had been tampered with further than we were able to determine. It did not occur to me that to have the lock taken out might disclose something. I don't believe I thought of it. There were no drilled holes in sight. I couldn't say that I concluded there were no drillings. What I actually thought was somebody had the combination to the safe and opened it. I just jumped at that conclusion. I didn't come to that conclusion and go no further. I didn't see any drillings. I couldn't say I was expressly looking for them. I saw there was nothing of that kind there. There might have been a speck or two but they were very small. I would even have detected a speck or two; possibly not if it was very small.

[98]

On redirect examination by Mr. WILLIAMS, the witness testified as follows:

Mr. Corey, a locksmith, was sent out at my request while I was there on Sunday following the loss being discovered. I saw him around what I

(Testimony of C. T. Thompson.)

would call the outer door of the vault. He showed us where there was a bolt removed out of one of the tumblers and a piece of tape put around. It formed a portion of one of the tumblers of the vault I would call it—held the safe when it was locked. It is a bolt, I think they call it. Mr. Corey, while I was there, was examining the safe. I did not learn anything through that examination.

#### TESTIMONY OF A. E. AIKMAN, FOR DEFENDANT.

A. E. AIKMAN, called and sworn as a witness on behalf of defendant testified, on direct examination, as follows:

My name is A. E. Aikman. I am connected with the detective force of Spokane and known as a plain clothes man and was so employed last September. I was detailed on the fair loss and went to work on that job on Friday morning, September 5th. Detective Alderson went with me. We reached the fair-ground about 10 o'clock—10:15 perhaps. We went around to the steel cage that surrounds the vault and into the vault. Alderson and myself spent perhaps 15 minutes in the vault and occupied ourselves in looking round over the vault and safe. We looked over the safe particularly, inspected it. I suppose we were back at the station within an hour from the time we left. I did later work on Sunday morning, the 7th or 8th of September, with Alderson. We were around there about an hour. [99] We were not in the vault

(Testimony of A. E. Aikman.)

that day. That is the last work I did. When we were in the vault we observed the safe and around the safe in our usual way of making an inspection of robbery of that kind. I looked at the flooring on which the safe rested; I did not see any steel shavings there at that time. I would have known them if they were there; I would have had no difficulty in recognizing them. I didn't see any. I did nothing in the way of sounding the walls. I examined, on one of these occasions, the cut in this partition wall where this sliding panel was cut and observed something with reference to an auger hole. That was on the west side of the cut on the 2x4. The auger hole must have been bored through from the inside as the auger hole cut into the 2x4 and then run out like that into this here through the wall, and then the auger would start here, you see, and run out about here from the inside showing that it could not have possibly been bored from the outside. This 2x4 was on the outside of the auditor's office. On Friday morning I was there about ten minutes in the vault. I don't know how many officers were there at the time; they were in and out of there. There were quite a few; they were in and out and around. You could get three or four men in there. I didn't count the number of men we had there. I don't know whether they looked like quite an army. I didn't count them. I don't know how many was out there. I wouldn't want to make a guess as to whether it was 12 or 14. I don't know whether we could all get in there at once; I don't

(Testimony of A. E. Aikman.)

know whether we tried. I don't know how many were in when I was in. I don't know whether it was crowded in there. I wasn't crowded any; I had plenty of room. I looked around—looked all around the safe—made out regular inspection. [100] I don't remember having my hands in my pockets. I made an inspection of the safe. I looked around to see what I saw there that would be evidence. I didn't say that I didn't see anything about the safe; that is all I saw at that time. I was not in there again. That is all I saw at that time. Then I went out, got on the car and went home. Hudson didn't tell me about finding these two cut entrances. Capt. Burns sent me out to make an investigation—see what I could find out there. I don't know who found these doors. Alderson was with me when I looked at them. There were other men around there—other detectives. Hudson was there and Thompson—just the four of us. We did not all look at it together. When I saw something that looked like an auger hole I concluded that it had been bored from the inside. I do not remember that Hudson said it had been bored from the outside. That is all that I know about it.

On redirect examination by Mr. WILLIAMS, the witness testified as follows:

When I was there on Friday there were a considerable number of people around there. I saw Troyer when I was looking at these cuts in the wall. I believe he is with the Burns Detective Agency.

## TESTIMONY OF W. J. HUDSON, FOR DEFENDANT.

W. J. HUDSON, called and sworn as a witness on behalf of defendant testified, on direct examination, as follows:

My name is W. J. Hudson and was called by the plaintiff as a witness. In September last I was connected with the detective department of the Spokane police force. I have been with the department about ten years. On Sunday following the loss I went out to investigate the loss, Mr. Thompson going with me. We arrived there about ten o'clock. [101] I first went into the vault. I took a weight that was there and examined the walls of the vault and the floor and moved everything in the vault. Examined all the walls and everything inside of the vault for openings. I tested the walls all over. I tested the ceiling, the floor and everything. The safe was supposed to have been examined by several men. Yes, I looked it over. I looked under and tested the bottom of it. I made a complete examination of all that I could see about the safe and what was under the safe. I moved everything that was around the safe away from the corner,—everything. I moved everything that was movable and moved it back. I had to take a light for the examination. With that light I could see everything that was to be seen. I don't remember seeing Exhibit 23 in there. I saw no steel shavings under or about the safe. I think, with the examination

(Testimony of W. J. Hudson.)

I made I would have seen them if they had been there. There were none there that I saw. I believe there were some scale weights on top of the safe. I did not see any lying underneath. I think I would recognize these steel shavings if I had seen them. I have met with them before. I was in the vault at this time a good hour. I did not make any particular examination of the vault after that. I remained on the case five weeks continuously from the time I went out there on that day. I was devoting no time to any other work. I was out there on the 24th of September. I was called by Chief of Police and notified to come to the station—that they had discovered something about the safe at the fair-grounds, and I went. The Chief, Capt. Burns and myself all went together. I went into the fair office and then into the vault. There was in the vault Mr. Corey, the safe man, Mr. Kizer, Mr. Semple, and Mr. Reinhard. I think Nordeen, a detective, was there at the time. We all came in there about [102] the same time. I discovered these steel shavings after going into the vault on that occasion. No one directed my attention to them. When I discovered them I was standing in front of the safe. Corey and Capt. Burns was talking facing this way to the left. Kizer was standing there then and Reinhard was back of him to one side. The light was an electric light at the time. There was no other then. On the previous occasion when I had examined the interior of the vault the light was electric light. I think it was the same as on this occasion. I think



(Testimony of W. J. Hudson.)

it was the same light; I am not sure of that, though. There was no difficulty in seeing the shavings. When I discovered them I was probably three feet away. I could see them very clearly. I picked up about half a teaspoon full or a little better. There were steel shavings scattered along on the board quite a bit and there was the two scale weights there. They have a little space—a little notch lying on the side and I moved them and in the notch of those two scale weights was a little small place about as big as your little finger nail of sort of brass shavings in a little sort of a pile like they had dropped in. When I picked up this little more than a half a teaspoonfull of shavings I couldn't get them all on that rough board. I don't know as to whether I got as much as half of them. I don't know as to whether I got half of them or what proportion I got. It was a rough board and I don't know how badly they were scattered. I took them to the station and turned them over to Chief Turner and he took them to the chemist and he used all to analyze them instead of part of them. Nobody else took any of them away while I was there. I heard there was but I don't know anything about it; it is hearsay with me. The scale weights which I mentioned were about 9 inches to a foot away [103] from a line drawn from the center of the door down to the floor. I didn't notice any steel shavings just at the place where the brass shavings were. When I speak of a bunch, well I mean a little pile—a very small little pile; probably it would cover the size of a

(Testimony of W. J. Hudson.)

—smaller than a bean, very small. It is just about the same color as the metal that you hold in your hand. I think there were two scale weights; there may have been three. These brass filings were between the grooves of these weights. When I was there on Sunday the 7th of September these weights were not in that position or place nor was the brass there at that time. While I was standing there at that time I discovered the shavings Chief Turner called me away from the group. Prior to Chief Turner calling me away I had not suggested to anyone the presence of the steel shavings. Then it was discovered immediately. There were no piles or bunches of these steel shavings; they were scattered along on this board in front of the safe door and on the floor a little. I did not pick up any of them that were on the floor.

On cross-examination by Mr. GRAVES, the witness testified as follows:

I picked up the shavings by just brushing them off kind of like onto a piece of paper with my hand. I had to keep brushing to get enough of them. Yes, they were on the stand; that is where they were where I brushed them from. I didn't get any slivers in my hand. I wasn't looking for dust. I don't know whether there was any. I was not there Friday morning. Sunday morning was the first time I went out. I didn't notice any dust on the shelf; it was nice and clean just like the top of this. [104] The stand around there was not perfectly clean but right in front where it was used it was

(Testimony of W. J. Hudson.)

clean. I know it wasn't dusty. At the sides and back behind it it was dusty but in front the dust was all off. At no time when I looked at it was any dust that I know of. I had no trouble in brushing them off. It was rougher than the place you are indicating but I got them all right. When I went up there there was all kind of little things—ticket rolls and things like that in this place under and around the safe. I can't tell you all of them. I don't remember all the stuff that was there. I saw these two weights at that time; they were either on top of the safe or on one of the shelves. I used them to hammer the wall with. I remember they were there because I used them to hammer. I used one. I don't know what I did with them; laid them down; I don't know where. I spent probably an hour hammering the walls of the vault. I had been looking for an entrance into the vault. I didn't spend so very long in examining the safe—probably not much over five minutes. I wasn't paying any attention to the safe. I was engaged to find an inlet and outlet to that place and I found it.

On redirect examination by Mr. WILLIAMS, the witness testified as follows:

I scraped the steel shavings with my hand, I couldn't get them all off; there would be some left in the cracks; they were rough boards.

## TESTIMONY OF FRANK KEENAN, FOR DEFENDANT.

FRANK KEENAN, called and sworn as a witness on behalf of defendant testified, on direct examination, as follows: [105]

My name is Frank Keenan. I am with the detective force of this city and have been a little over three years and have been with the police force fourteen years. I was with Officer Hudson when I was working on the fair case starting with Monday after that, but Sunday was my day off. I wasn't with him on that day. I started the Monday following the discovery of the loss. I had nothing to do with investigating this loss either on Friday or Saturday. The first time I was in the vault was when I went out with Luke May. I can't give you the date. It was probably five or six days after the fair closed. The fair runs one week ending September 6th or 7th. When I was there with Luke May it was before the discovery of the drilled hole. Hudson and myself went with May. We got some one to open the vault; I don't remember whether it was Lamb or Semple, and May and I went in and spent a few minutes in there. I looked around but didn't make any particular examination. I looked at the safe but did not make any close examination. It was on a stand or bench about three feet high. I looked around the stand or bench—around the top of that bench. I did not see any steel shavings. If I saw steel shavings, I think I would recognize them. I have seen them before. The morning following the

(Testimony of Frank Keenan.)

finding of the hole I was in there. I saw quite a few steel shavings at that time. There was no difficulty in seeing them. I couldn't say there was any difference in lighting on that occasion. The steel shavings were easily discernible when I was looking for them. I did not have to get down close to see them—I could see them two or three feet away. I don't remember seeing the scale weights. [106]

On cross-examination by Mr. GRAVES, the witness testified as follows:

We investigated a good many tips that didn't amount to anything. In fact all of them. I spent my time hither and thither on tips. You can't afford to pass any of them up; some of them may materialize; some of them might be good. I don't think the matter of a drilled hole was discussed before it was discovered. As far as I knew there was none. I was not looking for shavings particularly. The next time I went out there I had been told there were shavings there and I was looking for them and could see them. Nobody told me these scale weights were there. I wouldn't say I didn't see them but I don't recall that part of it. I saw a great many things in there I can't recall at this time.

## TESTIMONY OF LEROY SELF, FOR DEFENDANT.

LEROY SELF, called and sworn as a witness on behalf of defendant testified, on direct examination, as follows:

My name is Leroy Self and I am a city detective and have been since last December. I have been with the police force three years this July. I was detailed on this job with Detective Hunt the morning this report came in. Hunt and I went out together on Friday morning shortly after 8 o'clock. We were there before Chief Turner arrived. I think I first entered the vault. I think Hunt and the identification man, Jordan, entered first. I was in there shortly afterwards. I made an investigation on the inside. I was there from some time after 8 o'clock until noon before we left. I might have spent 15 or 20 minutes or possibly more of that time in the vault. I saw the ticket tray but didn't see it inside of the vault. I saw Jordan and Detective Hunt handling that. They were looking at it. While I was in [107] the vault I had a flashlight. I think there was an incandescent globe also burning in the vault. The light was such that I think I would have been able to see the steel shavings easy if they were there. I was using the flashlight in making the examination most of the time when I was on the inside.

(Testimony of Leroy Self.)

On cross-examination by Mr. GRAVES, the witness testified as follows:

The vault appeared fairly light. I don't think it was as light as this room. I think I could see perfectly. I think I saw the safe and all about it plainly. Objects that were visible. I looked in the safe in the pigeon-holes around the face of the safe and all around it. I was looking principally for finger-prints or something that might have been dropped out of somebody's pocket. I am not a finger-printer. I had a chance to see them. I had seen them before. Whether I could see them by looking at that safe just depends upon how plain it was. There were papers scattered around the safe,—some tickets and the general condition of the vault was paper and stuff there all around as near as I could see. I would not attempt to tell you the particular things under the safe. I saw that in Jordan's hands. I do recollect that. I have not forgotten whatever else I saw. I told you there were papers, large ticket rolls—big piles of them, that was outside of the safe. I saw papers and these small envelopes that had the ends torn off of them in the safe. I wouldn't say what else I saw around on the outside of the safe. I saw everything that was in the vault and safe. There were different articles. I don't remember what they were. [108] I knew nothing about the safe having been drilled. I didn't see where it had been drilled; I thought nothing about it at that time. I

(Testimony of Leroy Self.)

didn't see where it had been drilled. Hadn't thought anything in particular at the time; I was just looking around and didn't see any shavings.

On redirect examination by Mr. WILLIAMS the witness testified as follows:

My eyesight is good—very good.

TESTIMONY OF J. W. BOLT, FOR DEFENDANT.

J. W. BOLT, called and sworn as a witness on behalf of defendant testified, on direct examination, as follows:

My name is J. W. Bolt. I reside in Spokane. I am a mechanic with a knowledge of locks. I have not followed any particular line with reference to safes. I am a general all around mechanic on cash registers and things of that kind. I have had forty years' experience in the drilling of safes and with combinations of safes and opening safes where something goes wrong. At the request of the Fair Association shortly after this loss was discovered I visited the fair-grounds. I was asked to go out and change the combination; I did this. I think it was Mr. Randall, one of the attorneys for plaintiff here that called me. This was Friday morning after the robbery was discovered. When I got there I changed the combination of the safe and vault door. I took the combination out of the safe—that is, I took the stub of the combination out. I did not look the safe over. I think



(Testimony of J. W. Bolt.)

it was on Sunday afterwards I was requested to go out there and I looked the safe over after Corey had found a drill hole. I went out and looked at it. [109] I did not see the safe again. When I was out there changing the combination I did not look for steel shavings. When I was there at the time following the discovery of this hole my attention was called to a few steel shavings on the platform where the safe stood. Some of them were very easy to be seen. I suppose they were a grain or two in weight. 24 grains make a pennyweight; twenty pennyweights an ounce. It wouldn't nearly fill a teaspoon; it would be a very small quantity. This was on Sunday when I saw them. I don't know how long it was after the drilled hole had been discovered.

On cross-examination by Mr. GRAVES, the witness testified as follows:

I had been out of town two or three days before this Sunday I went out, and after I came back I was asked to go and look at it. I was told what Corey had found. When I changed the combination I didn't do anything that would have exposed that hole. I couldn't see the hole from anything that I did.

On redirect examination by Mr. WILLIAMS, the witness testified as follows:

I didn't discover the hole at that time.

Plaintiff and defendant both rest. [110]

Mr. WILLIAMS.—If your Honor pleases the

evidence being closed at this time, the defendant moves the Court to instruct the jury to return a verdict in favor of the defendant for the reason that the evidence is insufficient to warrant the submission of the case to the jury or even to support a judgment.

Mr. GRAVES.—The first affirmative defense I move to withdraw from the jury on the ground that there is nothing to sustain it whatever.

The COURT.—What have you to say to that?

Mr. WILLIAMS.—There isn't any testimony directed squarely to that unless it would be a question of inference.

The COURT.—The motion of plaintiff will be granted.

Mr. GRAVES.—The third affirmative defense I move to withdraw from the jury on the ground that there is no evidence whatever to support it.

Mr. WILLIAMS.—I will not resist that motion.

The COURT.—That motion will be granted.

There were extensive arguments on the defendant's motion to instruct the jury to return a verdict in favor of the defendant.

The COURT.—This case, as counsel suggested in argument, has been to me a most interesting one, but at the same time one not free from its burden. There are many contradictory inconsistencies in the case but that is all the more reason why it seems to me that it must go to the jury. If there is anything wrong with this ruling counsel will have later an opportunity to again present the case.

The motion for directed verdict will be denied.

Mr. WILLIAMS.—Exception. [111]

At the close of plaintiff's case defendant requested the Court to give the jury the following instructions, to which exceptions have been taken.

1. I instruct you that under the evidence in this case defendant is not liable, and you will return a verdict in favor of said defendant.

4. You are further instructed that if you should find by a preponderance of the evidence that the alleged burglar or burglars opened the door of the safe by the use of the manipulation of the combination lock on the safe, and in this manner was able to secure the money contained in the safe, that then your verdict should be in favor of defendant.

5. You are further instructed that if you should find that the alleged burglar or burglars opened the safe door by the use of a key, or by the manipulation of the combination, your verdict should be in favor of defendant, even though you should find from the evidence that the alleged burglar or burglars obtained knowledge of the combination and how to manipulate it for the purpose of opening the door, through some fraud, or by the use of a hole made in the safe door by themselves or others.

6. You are further instructed that unless you should find that a plug in the hole in the safe door under the rim adjoining the dial was removed by the alleged burglar or burglars, your verdict in this action must be for the defendant. [112]

7. You are instructed further that the policy of

insurance on which plaintiff sues was effective commencing with noon on August 31st, 1924, and up to and including September 10, 1924, at 12 o'clock noon. If you should find from the evidence that the alleged burglar or burglars removed a plug from the hole under the rim, and by means of said hole they were able to and did open the door of the safe, nevertheless, I instruct you to entirely disregard the existence of such hole, or the removal of any plug therefrom, unless you shall find by a preponderance of the evidence that said hole was bored by the burglar or burglars, or the plug was removed by such burglar or burglars between noon on August 31st, 1924, and the time of the discovery by the Fair Association that the safe had been opened, and the money taken.

8. You are further instructed that if any act or thing was done by the alleged burglar or burglars prior to noon, August 31, 1924, the date when the said policy became effective, for the purpose of burglarizing said safe, that no liability would attach, under the policy, for such act previously done, nor can you consider any such act for the purpose of creating or fixing a liability under the policy.

Thereupon, the case was argued to the jury by the attorneys for plaintiff and defendant. [113]

After the argument of counsel, the Court gave the jury the following instructions:

#### INSTRUCTIONS OF COURT TO THE JURY.

The COURT.—Gentlemen of the Jury: It now becomes the duty of the Court to explain to you

the issues in this case and to instruct you upon the rules of law applicable thereto by which you are to be guided in your deliberations, and it is your duty to accept these instructions as correct so far as the law of the case is concerned, and to be guided by them. This action is based on a policy of burglary insurance, in which the plaintiff alleges that the safe covered by the policy was burglariously entered during the night of September 4, 1924, and the contents thereof feloniously stolen and carried away, and recovery is sought for the amount of the money so burglariously stolen. The pertinent provision of the policy upon which this action is based reads as follows:

“Fidelity and Deposit Company of Maryland does hereby agree with the Assured to indemnify the Assured for all loss by burglary occasioned by the abstraction of any such property from the interior of any safe or vault described in the declarations and located in the Assured’s premises by any person or persons making felonious entry into such safe or vault by actual force and violence, of which force and violence there shall be visible marks made upon such safe or vault by tools, explosives, chemicals, or electricity.” The words “such property” contained in this provision of the policy include money and securities. The period of the policy, that is to say, the period during which the Assured was under the protection stipulated in the policy, was from August 31, 1924, to September 10, 1924, at twelve o’clock noon, Standard Time,

as to each of said dates. The plaintiff alleges that during the night of September 4, 1924 or the early morning hours of September 5, 1924, burglars effected a felonious entry into the office, vault and safe herein involved, and abstracted from the interior of the safe \$14,954.85 in money belonging to the plaintiff and kept in such safe; that such entry was effected into the vault and safe by actual force and violence in that tools were used for cutting and removing bolts on the vault door and for drilling into the safe door, thus enabling the burglars to gain access to the interior of the safe and abstract the money contained therein, and that there were visible marks of the tools so used upon both the safe and the vault doors. In this connection I instruct you that the safe, not the vault, was the thing covered by the policy of insurance in this case, and that the actual force and violence provided by the policy has reference to effecting an entry into the safe as contradistinguished from the vault.

To this complaint the defendant interposes a general denial and in addition affirmatively alleges that if any of the moneys referred to in the complaint were abstracted from the safe as alleged therein, that entry to the safe was effected by the manipulation of the lock thereof without the employment of any actual force or violence. The allegations of the complaint upon the one hand, and the denials thereof upon the other, present the issues which you are to determine in this case.

Under the provision of the policy to which I have adverted you will observe that it is necessary that the loss involved was a loss occasioned by burglary, and consisted in abstracting money from the interior of the safe in question by a person or persons making felonious entry into such safe by actual force and violence, of which force and violence there shall be visible marks made upon the safe by tools, there being no evidence tending to prove the use of explosives, chemicals, or electricity. [114] By the word "felonious" as used in these instructions is meant "done with intent to commit a crime."

I charge you that if you find from a preponderance of the evidence that some years previously to the entry into the safe referred to in the complaint a man employed by the plaintiff had drilled a hole in the door of the safe for the purpose of effecting an entry into it, and that after effecting such entry the hole was closed by a steel plug driven into it, and if you further find from such preponderance of the evidence that at the time, or previous to the time of the entry referred to in the complaint, the person or persons effecting such entry did so by drilling or drawing out with tools the plug which had been previously driven into the hole in the safe door, and were thereby enabled to effect an entrance into the safe, then the drilling or drawing out of such plug with tools was the use of actual force and violence within the terms of the policy, and the hole left in the safe

door by reason of such drilling or drawing out of such plug was visible mark of force and violence made upon such safe within the terms and meaning of the policy.

As I have already said, the policy in suit covered the period from noon of August 31, 1924, to noon of September 10, 1924. The defendant cannot be held liable upon such policy unless the money which was taken from the safe, as referred to in the complaint was taken or abstracted from the safe during that period. However, if you find from a preponderance of the evidence that the money was taken from the safe during that period, under such circumstances as would render the defendant liable upon its policy, as these have heretofore been defined to you, then defendant is liable for the loss of the plaintiff caused thereby, although you should further find that the person or persons who effected the entrance into the safe and took the money therefrom during the policy period had previously to its commencement removed the plug from the hole in the safe door by drilling or drawing it out with tools, and thereby acquired a knowledge of the working of the combination by means of which they were subsequently and during the policy period able to effect an entrance into the safe and extract therefrom its contents.

If you find from a preponderance of the evidence that the person or persons who effected an entrance into the safe and took the money therefrom, as described in the pleadings and evidence



did so by drilling or drawing out the plug in the safe door with tools, leaving a hole in the safe door by means of which such person or persons were enabled to gain a knowledge of the working of the combination, and so to work the combination and open the safe door and take the money from the safe, then I charge you that defendant is not relieved from liability because the final act of entering the safe was effected by working the combination on the safe door. If such person or persons were enabled to gain a knowledge of the manner of working the combination by means of drilling or drawing out the plug in the safe door, and the person or persons so drilling or drawing out such plug thus obtained access to the combination and thereby were enabled to effect an entrance into the safe, the defendant is liable, if you find the other circumstances present which I have stated to you to be necessary to sustain its liability.

In this connection I charge you that the abrasion or scratch and the small pit or hole in the brass disc constituting a part of the combination of the safe, which was offered in [115] evidence and examined by the jury, are not to be considered by you as visible marks made upon the safe within the meaning of the policy, or as any evidence of the use of either force or violence in effecting an entrance into the safe. The sole force and violence which you will consider is the force and violence, if any, employed in drilling out or drawing out

the plug from the hole in the safe door, if you find from the evidence that the hole had been closed as already stated, and that such plug was drilled or drawn out, and the only visible mark showing the use of tools which you can consider is the hole in the safe door made by drilling out or extracting the plug in question if you find such hole was so made.

On the contrary, I charge you that if entrance to the safe was effected without the employment of actual force or violence, but by means of working or manipulating the combination on the door of the safe, and the person so working or manipulating such combination without force or violence was enabled to gain access to the interior of the safe and thereby steal and carry away its contents, such an entrance is not within the terms of the policy in suit, and the defendant company is not liable therefor.

I further charge you that the burden of proof in this case rests upon the plaintiff to establish that at the time and upon the occasion in question the safe was burglariously entered by some person or persons, and that such felonious entry into the safe was effected by actual force and violence, of which force and violence there must be visible marks made upon such safe by tools, and that by means of the entry so effected the money in question was abstracted from the safe.

In the event your verdict is in favor of the plaintiff, the amount of your verdict will be the sum of \$15,211.54.

After the completion of the instructions and before the jury retired to consider their verdict, defendant took exceptions which were allowed as follows :

EXCEPTIONS TO INSTRUCTIONS OF COURT TO THE JURY.

Exception No. 1. Defendant excepts to the refusal of the Court to give defendant's requested instruction No. 1 for a peremptory verdict. [116]

Exception No. 2. Defendant excepts to the refusal of the Court to give its requested instruction No. 2.

Exception No. 3. Defendant excepts to the refusal of the Court to give its requested instruction No. 3.

Exception No. 4. Defendant excepts to the refusal of the Court to give its requested instruction No. 4.

Exception No. 5. Defendant excepts to the refusal of the Court to give its requested instruction No. 5.

Exception No. 6. Defendant excepts to the refusal of the Court to give its requested instruction No. 6.

Exception No. 7. Defendant excepts to the refusal of the Court to give its requested instruction No. 7.

Exception No. 8. Defendant excepts to the refusal of the Court to give its requested instruction No. 8.

Exception No. 9. Defendant excepts to that in-

struction found on page 4 of the typewritten instructions of the Court, being the first instruction on that page, and to each and every part thereof, and particularly to that part wherein the Court says:

“That if you further find from such preponderance of the evidence that at the time or previous to the time of the entry referred to in the complaint the person or persons effecting such entry did so by drilling or drawing out with tools the plug which had been previously driven into the hole in the safe door and were thereby enabled to effect an entrance into the safe, then the drilling or drawing out of such plug with tools was the use of actual force and violence within the terms of the policy, and the hole left in the safe [117] door by reason of such drilling or drawing out of such plug was a visible mark of force and violence made upon such safe within the terms and meaning of the policy.”

And more particularly to the submission to the jury of the question of being permitted to return a verdict in favor of the plaintiff even though the force and violence was previous to the commencement of the policy period.

Exception No. 10. The defendant excepts to that other instruction starting on page 4 and ending on page 5, and to each and every part thereof, and particularly to that part wherein the Court says:

“Although you should further find that the person or persons who effected the entrance into the safe and took the money therefrom

during the policy period had previous to its commencement removed the plug from the hole in the safe door by drilling or drawing out with tools and thereby acquired a knowledge of the working of the combination by means of which they were subsequently, and during the policy period, able to effect an entrance into the safe and extract therefrom its contents.”

Exception No. 11. Defendant excepts to the instruction appearing on page 5, and to each and every part thereof as follows:

“If you find from a preponderance of the evidence that the person or persons who effected an entrance into the safe and took the money therefrom, as described in the pleadings and evidence, did so by drilling or drawing out the plug in the safe door with tools, leaving a hole in the safe door by means of which such person or persons were enabled to gain [118] a knowledge of the working of the combination, and so to work the combination and open the safe door and take the money from the safe, then I charge you that defendant is not relieved from liability because of the final act of entering the safe was effected by working the combination on the safe door. If such person or persons were enabled to gain a knowledge of the manner of working the combination by means of drilling or drawing out the plug in the safe door, and the person or persons so drilling or drawing out such plug thus obtained access to the combination and thereby were en-

abled to effect an entrance into the safe, the defendant is liable, if you find the other circumstances present which I have stated to you to be necessary to sustain its liability.”

The Court also gave the following instruction to which there was no objection:

“In this connection I charge you that the abrasion or scratch and the small pit or hole in the brass disc constituting a part of the combination of the safe, which was offered in evidence and examined by the jury, are not to be considered by you as visible marks made upon the safe within the meaning of the policy, or as any evidence of the use of either force or violence in effecting an entrance into the safe. The sole force and violence which you will consider is the force and violence, if any, employed in drilling out or drawing out the plug from the hole in the safe door, if you find from the evidence that the hole had been closed as already stated, and that such plug was drilled or drawn out, and the only visible mark showing the use of tools which you can consider is the hole in the safe door made by drilling out or extracting the plug in question if you find such hole was so made.”

Received a copy this 10th day of June, 1925, of above bill of exceptions as proposed by defendant.

GRAVES, KIZER & GRAVES,

Attorneys for Plaintiff. [119]

CERTIFICATE OF JUDGE TO BILL OF EX-  
CEPTIONS.

I, J. Stanley Webster, Judge of the above-court, and the Judge who presided in said court on the trial of the foregoing cause, do hereby certify that the matters and proceedings set out in the foregoing bill of exceptions are matters and proceedings occurring in this cause and not already a part of the record therein, and that the bill of exceptions was served and filed within the time allowed by law as extended by the order of the Court, and that said bill of exceptions is made a part of the record herein.

I further certify that after amendments were proposed by the plaintiff to said bill of exceptions a hearing was had thereon and all the amendments proposed by plaintiff, which were allowed by the Court, have been incorporated in said bill of exceptions.

I further certify that said bill of exceptions conforms to the truth and contains all the matters and facts material in the proceedings heretofore occurring in the cause and not already a part of the record therein and necessary for the review of this cause by the Circuit Court of Appeals, and the said bill of exceptions, with the amendments proposed by the plaintiff incorporated therein, so far as allowed, is hereby settled, allowed and certified as the true bill of exceptions in this cause.

The Clerk of this court is directed to forward to the Circuit Court of Appeals all exhibits introduced

in evidence which are hereby made a part of this bill of exceptions.

Done in open court this 30th day of June, 1925.

J. STANLEY WEBSTER,

District Judge.

Filed in the U. S. District Court, Eastern Dist. of Washington. Jun. 30, 1925, —M. Alan G. Paine, Clerk. Eva M. Hardin, Deputy. [120]

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In the District Court of the United States for the Eastern District of Washington, Northern Division.

L-4321.

SPOKANE INTERSTATE FAIR ASSOCIATION, a Corporation,

Plaintiff,

vs.

FIDELITY AND DEPOSIT COMPANY OF MARYLAND, a Corporation,

Defendant.

PETITION FOR WRIT OF ERROR.

Comes now Fidelity and Deposit Company of Maryland, a corporation, defendant herein, and says:

That on or about the 8th day of May, 1925, this court entered a judgment herein in favor of plaintiff, Spokane Interstate Fair Association, a corporation, and against the said defendant, Fidelity and Deposit Company of Maryland, a corporation, in the



sum of \$15,211.54, with interest from the date thereof, with costs, in which judgment and proceedings had thereunto in this cause certain errors were committed to the prejudice of the defendant, all of which will appear more in detail from the assignment of errors which is filed with this petition.

WHEREFORE, the said Fidelity and Deposit Company of Maryland prays that a writ of error may issue in its behalf out of the United States Circuit Court of Appeals in and for the Ninth Circuit of the United States for the correction of the errors so complained of, and that this court fix the bond to operate also as a supersedeas, and that a transcript of the records, proceedings and papers in this cause, duly authenticated, may be sent to the said Circuit Court of Appeals.

WILLIAMS & CORNELIUS,

JAS. A. WILLIAMS,

Attorneys for Defendant.

Filed in the U. S. District Court, Eastern Dist. of Washington. June 30, 1925, —M. Alan G. Paine, Clerk. Eva M. Hardin, Deputy. [121]

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Filed in the U. S. District Court, Eastern Dist. of Washington. June 30, 1925, —M. Alan G. Paine, Clerk. Eva M. Hardin, Deputy.

In the District Court of the United States, for the  
Eastern District of Washington, Northern Di-  
vision.

No. L.—4321.

SPOKANE INTERSTATE FAIR ASSOCIA-  
TION,

Plaintiff,

vs.

FIDELITY & DEPOSIT COMPANY OF MARY-  
LAND,

Defendant.

#### ASSIGNMENTS OF ERROR.

Comes now the defendant, Fidelity & Deposit Company of Maryland, and makes the following assignments of error, which defendant avers occurred on the trial of this cause, and which defendant will rely upon in the prosecution of the writ of error in the above-entitled cause.

1. The Court erred in denying defendant's motion made at the time when the evidence was all in, that the jury be instructed to return a verdict in favor of defendant.

2. The Court erred in refusing to give defendant's requested instruction 1 as follows:

I instruct you that under the evidence in this case defendant is not liable, and you will return a verdict in favor of said defendant.

3. The Court erred in refusing to give defendant's requested instruction 4 as follows:

You are further instructed that if you should find by a preponderance of the evidence that the alleged burglar or burglars opened the door of the safe by the use of the manipulation of the combination lock on the safe, and in this manner was able [122] to secure the money contained in the safe, that then your verdict should be in favor of defendant.

4. The Court erred in refusing to give defendant's requested instruction 5 as follows:

You are further instructed that if you should find that the alleged burglar or burglars opened the safe door by the use of a key, or by the manipulation of the combination, your verdict should be in favor of defendant, even though you should find from the evidence that the alleged burglar or burglars obtained knowledge of the combination and how to manipulate it for the purpose of opening the door, through some fraud, or by the use of a hole made in the safe door by themselves or others.

5. The Court erred in refusing to give defendant's requested instruction 6 as follows:

You are further instructed that unless you should find that a plug in the hole in the safe door under the rim adjoining the dial was removed by the alleged burglar or burglars, your verdict in this action must be for the defendant.

6. The Court erred in refusing to give defendant's requested instruction 7 as follows:

You are instructed further that the policy of insurance on which plaintiff sues was effective

commencing with noon on August 31, 1924, and up to and including September 10, 1924, at 12 o'clock noon. If you should find from the evidence that the alleged burglar or burglars removed a plug from the hole under the rim, and by means of said hole they were able to and did open the door of the safe, nevertheless, I instruct you to entirely disregard the existence of such hole, or the removal of any plug therefrom, unless you shall find by a preponderance of the evidence that said hole was bored by the burglar or burglars, or the plug was removed by such burglar or burglars between noon on August 31, 1924 and the time of the discovery by [123] the Fair Association that the safe had been opened, and the money taken.

7. The Court erred in refusing to give defendant's requested instruction 8 as follows:

You are further instructed that if any act or thing was done by the alleged burglar or burglars prior to noon, August 31, 1924, the date when the said policy became effective, for the purpose of burglarizing said safe, that no liability would attach, under the policy, for such act previously done, nor can you consider any such act for the purpose of creating or fixing a liability under the policy.

8. The Court erred in instructing the jury as follows:

I charge you that if you find from a preponderance of the evidence that some years previously to the entry into the safe referred

to in the complaint a man employed by the plaintiff had drilled a hole in the door of the safe for the purpose of effecting an entry into it, and that after effecting such entry the hole was closed by a steel plug driven into it, and if you further find from such preponderance of the evidence that at the time, or previous to the time, of the entry referred to in the complaint, the person or persons effecting such entry did so by drilling or drawing out with tools the plug which had been previously driven into the hole in the safe door, and were thereby enabled to effect an entrance into the safe, then the drilling or drawing out of such plug with tools was the use of actual force and violence within the terms of the policy, and the hole left in the safe door by reason of such drilling or drawing out of such plug was visible mark of force and violence made upon such safe within the terms and meaning of the policy.

9. The Court erred in instructing the jury as follows:

As I have already said, the policy in suit covered the period from noon of August 31, 1924, to noon of September 10, 1924. [124] The defendant cannot be held liable upon such policy unless the money which was taken from the safe, as referred to in the complaint, was abstracted from the safe during that period. However, if you find from a preponderance of

the evidence that the money was taken from the safe during that period, under such circumstances as would render the defendant liable upon its policy, as these have heretofore been defined to you, then defendant is liable for the loss of the plaintiff caused thereby, although you should further find that the person or persons who effected the entrance into the safe and took the money therefrom during the policy period had previously to its commencement removed the plug from the hole in the safe door by drilling or drawing it out with tools, and thereby acquired a knowledge of the working of the combination by means of which they were subsequently and during the policy period able to effect an entrance into the safe and extract therefrom its contents.

10. The Court erred in instructing the jury as follows:

If you find from a preponderance of the evidence that the person or persons who effected an entrance into the safe and took the money therefrom as described in the pleadings and evidence, did so by drilling or drawing out the plug in the safe door with tools, leaving a hole in the safe door by means of which such person or persons were enabled to gain a knowledge of the working of the combination, and so to work the combination and open the safe door and take the money from the safe, then I charge you that defendant is not relieved from liability be-

cause of the final act of entering the safe was effected by working the combination on the safe door. If such person or persons were enabled to gain a knowledge of the manner of working the combination by means of drilling or drawing out the plug in the safe door, and the person or persons so drilling [125] or drawing out such plug thus obtained access to the combination and thereby were enabled to effect an entrance into the safe, the defendant is liable, if you find the other circumstances present which I have stated to you to be necessary to sustain its liability.

11. The Court erred in overruling defendant's motion for new trial.

WHEREFORE, the said defendant, the plaintiff in error, prays that the judgment of the said Court be reversed; that such directions be given that full force and efficacy may inure to the defendant by reason of the assignments of error above, and the defenses set out in its answer filed in said cause.

WILLIAMS & CORNELIUS,  
JAS. A. WILLIAMS,

Attorneys for Plaintiff in Error (Defendant in the Lower Court.) [126]

In the District Court of the United States for the  
Eastern District of Washington, Northern  
Division.

(No. 4313.)

SPOKANE INTERSTATE FAIR ASSOCIA-  
TION, a Corporation,

Plaintiff,

vs.

FIDELITY AND DEPOSIT COMPANY OF  
MARYLAND, a Corporation,

Defendant.

ORDER ALLOWING WRIT OF ERROR.

On this 30 day of June, 1925, came the defendant, Fidelity and Deposit Company of Maryland, and filed herein and presented to the Court its petition praying for the allowance of a writ of error and filed therewith its assignments of error intended to be urged by it and praying that the bond to be given to operate also as a supersedeas and stay bond be fixed by the Court and also that a transcript of the record and proceedings and papers upon which the judgment rendered herein was rendered, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Judicial Circuit, and such other and further proceedings may be had as may be proper in the premises.

In consideration thereof the Court does allow the writ of error and the bond for such writ of error and also to operate as a supersedeas is fixed at the



sum of \$17,000.00, and upon defendant giving such bond all proceedings to enforce such judgment be stayed until such writ of error is determined.

J. STANLEY WEBSTER,  
U. S. District Judge.

Filed in the U. S. District Court, Eastern Dist. of Washington, June 30, 1925. Alan G. Paine, Clerk. Eva M. Hardin, Deputy. [127]

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In the District Court of the United States for the Eastern District of Washington, Northern Division.

No. 4313.

SPOKANE INTERSTATE FAIR ASSOCIATION, a Corporation.

Plaintiff,

vs.

FIDELITY AND DEPOSIT COMPANY OF MARYLAND, a Corporation,

Defendant.

BOND ON WRIT OF ERROR.

KNOW ALL MEN BY THESE PRESENTS: That we, Fidelity & Deposit Company of Maryland, a corporation, the defendant above named as principal, and National Surety Company; a surety corporation organized and existing under the laws of the state of New York and au-

thorized to become sole surety on judicial bonds as surety, are held and firmly bound unto Spokane Interstate Fair Association, its successors and assigns, in the sum of \$17,000.00 to be paid said Spokane Interstate Fair Association, for which payment well and truly to be made we bind ourselves and each of us jointly and severally, firmly by these presents.

Sealed with our seals and dated this 30th day of June, 1925.

WHEREAS, the above-named Fidelity & Deposit Company of Maryland has sued out a writ of error to the United States Circuit Court of Appeals for the Ninth Circuit to reverse the judgment in the above-entitled cause by the District Court of United States for the Eastern District of Washington, Northern Division, and said District Court has fixed the bond to be given on said writ of error in the sum of Seventeen Thousand Dollars (\$17,000.00) to operate for the purpose of the writ of error, and also as a supersedeas and stay: [128]

NOW, THEREFORE, the condition of this obligation is such that if the above-named principal, Fidelity and Deposit Company of Maryland shall prosecute said writ to effect and answer all costs and damages if it shall fail to make good its plea, then this obligation should be void; otherwise to remain in full force and effect.

FIDELITY AND DEPOSIT COMPANY  
OF MARYLAND,  
By WILLIAMS & CORNELIUS,  
Its Attorneys.

[Seal N. S. Co.]

NATIONAL SURETY COMPANY,

By S. A. MITCHELL,

Resident Vice-President.

G. B. FERGUSON,

Resident Asst. Secretary.

Approved: June 30th, 1925.

J. STANLEY WEBSTER,

District Judge.

Filed in the U. S. District Court, Eastern Dist. of Washington, Jun. 30, 1925,—M. Allan G. Paine, Clerk. Eva M. Hardin, Deputy. [129]

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In the District Court of the United States for the Eastern District of Washington, Northern Division.

(No. L.—4321.)

SPOKANE INTERSTATE FAIR ASSOCIATION, a Corporation,

Plaintiff,

vs.

FIDELITY AND DEPOSIT COMPANY OF MARYLAND, a Corporation,

Defendant.

WRIT OF ERROR.

The President of the United States to the Honorable Judge of the District Court of the United States for the Eastern District, Northern Division, GREETING:

Because of the records and proceedings as also in the rendition of the judgment on a plea which, in said District Court before you or some of you between Fidelity and Deposit Company of Maryland, plaintiff in error, (defendant in the lower court), and Spokane Interstate Fair Association, defendant in error (plaintiff in the lower court), a manifest error hath happened to the great damage of the Fidelity and Deposit Company of Maryland, plaintiff in error, as by its complaint appears:

We, being willing that error, if any, hath happened, shall be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, DO COMMAND YOU if judgment be therein given that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Judicial Circuit, together with this writ so that you have the same at the city of San Francisco, in the State of California, on July 30, 1925, the said Circuit Court of Appeals to be then and there held that the record and [130] proceeding aforesaid being inspected, this said Circuit Court of Appeals may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

WITNESS the Honorable WILLIAM H. TAFT, Chief Justice of the Supreme Court of the

United States this 30th day of June, in the year of our Lord, 1925.

ALAN G. PAINE,  
Clerk of the United States District Court for the  
Eastern District of Washington, Northern Di-  
vision.

Allowed by:

J. STANLEY WEBSTER,  
District Judge.

Filed in the U. S. District Court, Eastern Dist.  
of Washington. Jun. 30, 1925, —M. Alan G.  
Paine, Clerk. Eva M. Hardin, Deputy. [131]

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In the District Court of the United States for the  
Eastern District of Washington, Northern Di-  
vision.

No. L.-4321.

FIDELITY AND DEPOSIT COMPANY OF  
MARYLAND, a Corporation,  
Plaintiff in Error,

vs.

SPOKANE INTERSTATE FAIR ASSOCIA-  
TION, a Corporation,  
Defendant in Error.

CITATION ON WRIT OF ERROR.

The President of the United States to Spokane  
Interstate Fair Association and to Messrs.  
Randall & Danskin and Graves, Kizer &  
Graves, Your Attorneys, GREETING:

YOU ARE HEREBY CITED AND ADMONISHED to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit to be held at the city of San Francisco, in the State of California, on July 30, 1925, pursuant to a writ of error regularly issued and which is on file in the office of the clerk of the District Court of the United States for the Eastern District of Washington, Northern Division, in an action pending in said court wherein Fidelity and Deposit Company of Maryland is plaintiff in error (defendant in the lower court), and Spokane Interstate Fair Association is defendant in error (plaintiff in the lower court), and to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

WITNESS the Honorable WILLIAM H. TAFT, Chief Justice of the Supreme Court of the United States of America, this 30 day of June, 1925.

J. STANLEY WEBSTER,  
U. S. District Judge.  
Attest: ALAN G. PAINE,  
Clerk of Said Court.

Received a copy this 30th day of June, 1925.

GRAVES, KIZER & GRAVES,  
Attorneys for Plaintiff (Def't. in Error). [132]

United States of America,  
Eastern District of Washington,—ss.

I, A. F. Kees, United States Marshal, for the

above district, hereby certify that I served the within citation on the Spokane Interstate Fair Association, a corporation, defendant in error, on the 2d day of July, 1925, in the city and county of Spokane in the Eastern District of Washington, by then and there delivering to and leaving with Thomas S. Griffith, president of the said defendant in error, a full, true and correct copy of said citation.

Dated at Spokane in the Eastern District of Washington, this 2d day of July, 1925.

A. F. KEES,

United States Marshal.

By A. L. Dilley,

Deputy.

Filed in the U. S. District Court, Eastern Dist. of Washington. June 30, 1925. Alan G. Paine, Clerk. Eva M. Hardin, Deputy. [133]

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In the District Court of the United States, for the Eastern District of Washington, Northern Division.

No. L. 4321.

SPOKANE INTERSTATE FAIR ASSOCIATION,

Plaintiff,

vs.

FIDELITY & DEPOSIT COMPANY OF MARYLAND,

Defendant,

PRAECIPE FOR TRANSCRIPT OF RECORD.

To the Clerk of the Above-entitled Court:

You will please prepare complete record in this case which will include complaint, answer, reply, judgment, stipulation extending time for serving bill of exceptions, order extending time for serving bill of exceptions, petition for new trial, order denying petition for new trial, bill of exceptions, order settling bill of exceptions, petition for writ of error, assignments of error, order allowing writ of error, bond for writ of error, writ of error, citation and proof of service, and praecipe.

Dated this 3d day of July, 1925.

WILLIAMS & CORNELIUS,

Attorneys for Plaintiff in Error.

We approve of the above:

GRAVES, KIZER & GRAVES,

Attorneys for Defendant in Error.

Filed in the U. S. Dist. Court, Eastern Dist. of Washington, Jul. 3, 1925, — M. Alan G. Paine, Clerk. Eva M. Hardin, Deputy. [134]



In the District Court of the United States for the  
Eastern District of Washington, Northern Di-  
vision.

No. L. 4321.

SPOKANE INTERSTATE FAIR ASSOCIA-  
TION, a Corporation,

Plaintiff,

vs.

FIDELITY AND DEPOSIT COMPANY OF  
MARYLAND, a Corporation,

Defendant.

CERTIFICATE OF CLERK U. S. DISTRICT  
COURT TO TRANSCRIPT OF RECORD.

United States of America,  
Eastern District of Washington,—ss.

I, Alan G. Paine, Clerk of the above-entitled court, do hereby certify that the foregoing pages numbered from 1 to 134, inclusive, constitute and are a full, true and correct copy of that part of the record and proceedings as called for in the praecipe of the plaintiff in error, and as the same remain on file and of record in said District Court, and that the same constitutes my return on the writ of error from the judgment of said District Court, which writ of error was lodged and filed in my office on the 30th day of June, A. D. 1925.

I further certify that I attach hereto, and herewith transmit the original citation, and the original writ of error issued in said cause.

I further certify that the fees of the clerk of preparing and certifying said transcript amounts to the sum of Twenty and 60/100 (\$20.60) Dollars, which amount has been paid to me in full by the attorney for the plaintiff in error. [135]

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, at Spokane, Washington, in said District, this 13 day of July, A. D. 1925.

[Seal]

ALAN G. PAINE,  
Clerk. [136]

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[Endorsed]: No. 4639. United States Circuit Court of Appeals for the Ninth Circuit. Fidelity & Deposit Company of Maryland, a Corporation, Plaintiff in Error, vs. Spokane Interstate Fair Association, a Corporation, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the Eastern District of Washington, Northern Division.

Filed July 15, 1925.

F. D. MONCKTON,  
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,  
Deputy Clerk.